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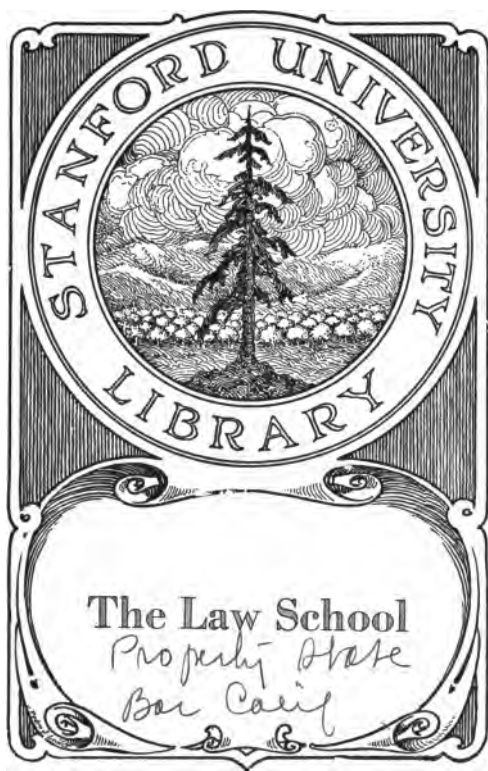
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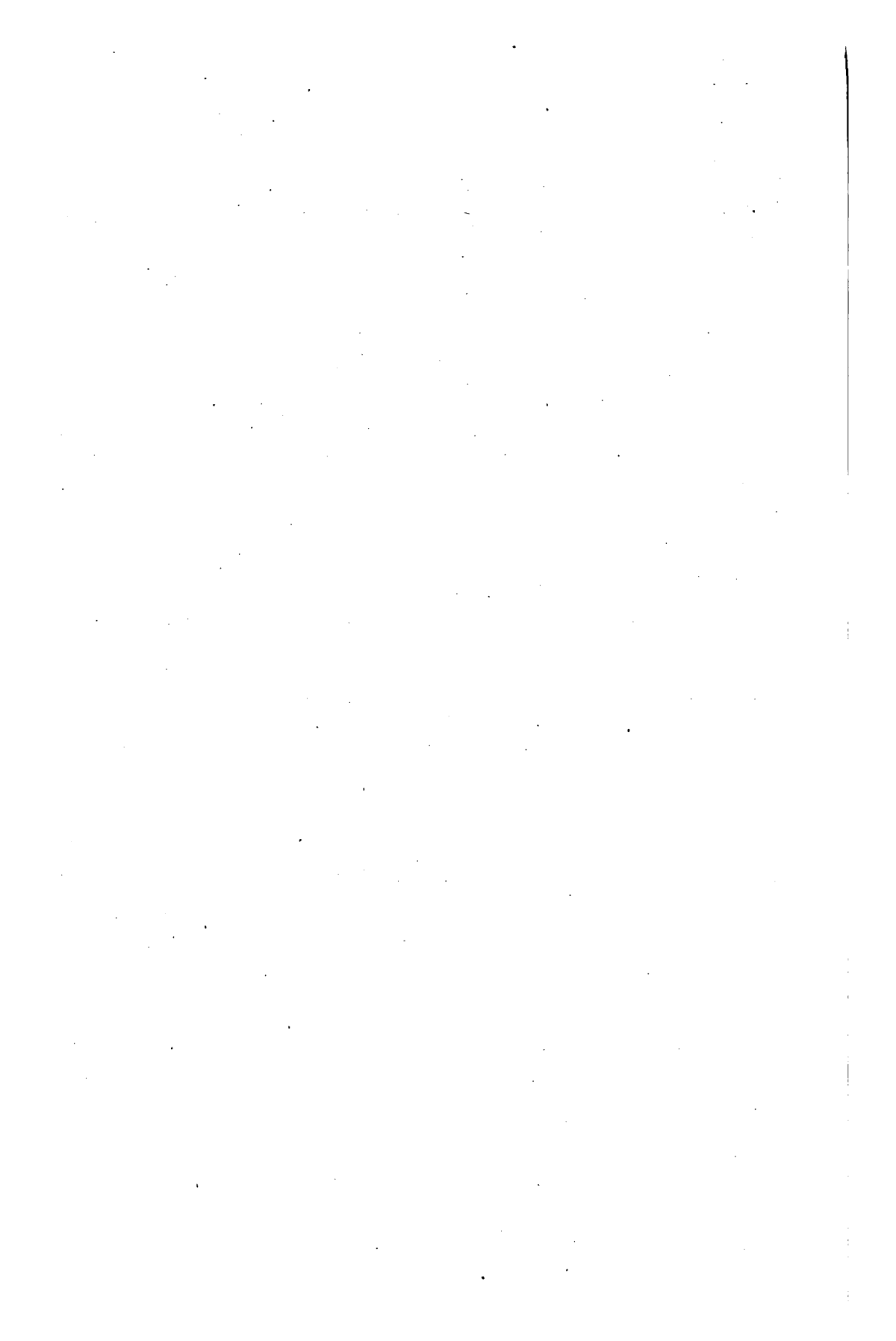
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John F. Duncan



# Texas Bar Association

PROCEEDINGS OF THE

## THIRTY-FIRST ANNUAL SESSION

HELD AT

Galveston, July 2-3-4, 1912

AND

Constitution and By-Laws of the Association

List of Members, Officers and Committees

1912

REPORTED BY J. A. LORD, WACO

These Proceedings are published by authority and distributed to members of the Association.—J. B. Cave, Secretary

The Thirty-Second Annual Session of the Texas Bar Association will be held in the city of Dallas



A. C. BALDWIN & SONS  
AUSTIN, TEXAS  
1913

STANDARD BOOK EXCHANGE

AMERICAN BAR ASSOCIATION.

OFFICERS FOR 1912-1913.

HON. FRANK B. KELLOGG, President.....St. Paul, Minnesota.  
GEORGE WHITELOCK, Secretary.....Baltimore, Maryland.  
W. THOMAS KEMP, Assistant Secretary.....Baltimore, Maryland.  
FREDERICK E. WADHAMS, Treasurer.....Albany, New York.  
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R. E. L. SANER, Member General Council for Texas.....Dallas, Texas.

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JOHN L. DYER.....El Paso.  
W. L. ESTES.....Texarkana.  
AMOS L. BEATY.....Houston.  
HIRAM GLASS .....Austin.

AMERICAN BAR ASSOCIATION DELEGATES.

SAM STREETMAN .....Houston.  
M. E. KLEBERG.....Galveston.  
F. C. PROCTOR.....Beaumont.

ALTERNATES.

FRANK C. JONES.....Houston.  
P. G. DEDMON.....Fort Worth.  
T. H. FRANKLIN.....San Antonio.

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# TEXAS BAR ASSOCIATION

## OFFICERS AND COMMITTEES 1912-1913.

JOHN T. DUNCAN, President.....La Grange.  
W. W. SEARCY, Vice-President.....Brenham.  
J. B. CAVE, Secretary.....Dallas.  
W. D. WILLIAMS, Treasurer.....Austin.

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FRANK C. JONES.....Houston.  
H. C. CARTER.....San Antonio.  
W. H. BURGESS.....El Paso.  
R. E. L. SANER.....Dallas.

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W. E. HAWKINS.....Brownsville.  
W. S. HOLMAN.....Bay City.  
R. E. L. SANER.....Dallas.  
W. W. BALLEW.....Corsicana.

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H. C. CARTER.....San Antonio.  
W. S. BAKER.....Waco.  
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HAMPSON GARY.....Tyler.  
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J. F. DABNEY.....Liberty.

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R. J. BOYLE.....San Antonio.  
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J. B. CAVE.....Austin.  
W. F. KELLY.....Galveston.  
GEORGE E. LENERT.....La Grange.  
ALLAN D. SANFORD.....Waco.

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JOHN M. MATHIS.....Brenham.  
L. H. MATHIS.....Wichita Falls.  
W. A. MORRISON.....Cameron.  
BEN POWELL.....Huntsville.

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J. W. HILL.....San Angelo.  
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E. T. BRANCH.....Houston.  
G. G. KELLY.....Wharton.  
J. W. TERRY.....Galveston.

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T. J. BROWN, Chairman.....Austin.  
F. A. WILLIAMS, Vice-Chairman.....Austin.  
J. C. TOWNES, Secretary.....Austin.  
A. J. HARPER.....Austin.  
B. H. RICE.....Austin.  
R. G. STREET.....Galveston.  
C. G. KREUGER.....Bellville.  
H. C. CARTER.....San Antonio.  
W. W. SEARCY.....Brenham.

PROCEEDINGS  
OF THE  
THIRTY-FIRST ANNUAL SESSION  
OF THE  
TEXAS BAR ASSOCIATION  
HELD IN THE  
CITY OF GALVESTON, JULY 2, 3, 4, 1912

JULY 2, 1912—MORNING SESSION.

THE PRESIDENT: Gentlemen of the Bar Association, you will please come to order. In opening the thirty-first annual meeting of the Texas Bar Association, I have the pleasure of introducing to you Mr. William T. Armstrong, of the Galveston Bar, who will deliver the address of welcome. (Applause.)

ADDRESS OF WELCOME.

BY WILLIAM T. ARMSTRONG, GALVESTON.

*Mr. President and Fellow Members of the Texas Bar Association:*

Acting in behalf of the local Bar Association, as its president, I desire to extend to all the members of the Texas Bar Association the hand of cordial welcome, and if the feeling with which the Association and its members convene here today is that which is in the breasts of the Galveston members, that feeling will be one not of a transient visitation among us, but rather that of a homecoming. It is the history of the Association that thirty-one years ago this body had its birth here in the city of Galveston, and those who were stalwart at the local Bar at that date may claim no small pride in the creation of the present Association, that

has so much of power for good and so much influence in the affairs of our great State, and it is the cherished hope of the local members of today that it may be the wish again of the Texas Bar Association to return, if not annually, at least oftentimes, under the old roof tree that first sheltered us at the time of our birth. The history of the Association further is that down to the year 1897 or 1898 the meetings were held annually in Galveston, and during the later years of that period, as some of you doubtless recall, were held in the parlors of the old Beach Hotel, that stood just a few hundred yards from the site of this structure. I have no doubt that many of you pleasantly remember that great building, with its spacious verandas, and its grand and pleasing prospect over the waters of the Gulf, and the only reason, as I recall, why the old Beach Hotel ceased to be the rendezvous for us all was that in 1898 it perished in the flames. After that perhaps one meeting was held in Galveston, but the quarters and accommodations were not adequate or pleasant, and so since that time our body has been itinerant in its character. While I would not for a moment suggest anything improper here, yet I trust the Association will consider the policy of returning again, if not annually, yet oftentimes, to this old Island City by the Gulf.

Mr. President, it frequently is the function and pleasure of the mayor of a city to extend to our Association the greeting of welcome, and it would be doubly appropriate on this occasion, as our mayor-commissioner is himself a lawyer, but we feel that it is not even appropriate to tender the keys of the city to this organization, because it comes not as a stranger among us, but it comes as a child to the parent that gave it birth. So the keys by right of heritage, are already yours, and there is no need to tender them to you, and as our Lord High Mayor as a lawyer also presides over the destinies of our corporation court, each and every member will feel well assured that all acts, be they entirely circumspect or uncircumspect, lawyerlike or unlaywerlike, will be condoned, and if one condonation is not sufficient, will be condoned again. (Applause.) Of course, I would not have it imputed to us that any suggestion of this kind is necessary, but in the line of precedent I simply throw it out.

I trust that the days you will spend with us will not be void of

pleasure This city, and especially this building, have attractions of their own, and you may wander along the beach, and you will find just a short distance from here our sand man who fashions in beauteous form the shapely visions of mermaids and those other creatures that are denizens of the deep. And if you be not satisfied with those insensate forms, if you will lift your eyes a little farther you will find the real sirens, in all their glory of form and beauty, and we trust that the vision will be most pleasing. I would warn you that there may be dangers amid the vision, but as we are all of adult age further words are not necessary. (Applause.)

Gentlemen, the committee on arrangements of the local Bar in due time will have some announcements to make to you that we trust will be interesting. In closing these remarks of greeting, we desire to say to you that it is with the sincerest pleasure that we have you, the members of this Association, of all associations in the State, with us, and again we trust that your stay with us may be pleasant and profitable. (Applause.)

THE PRESIDENT: On behalf of the Bar Association I will ask Judge Jenkins to respond. (Applause.)

#### RESPONSE TO ADDRESS OF WELCOME.

BY HON. C. H. JENKINS, BROWNWOOD.

*Mr. President and Members of the Texas Bar Association:*

The pleasant words of greeting which we have heard from the gentleman who represents Galveston remind us that words fitly spoken are like apples of gold in pictures of silver, and as your representative I can only regret that my stammering tongue can not find fitting phrase for your response. Gentlemen of the Galveston Bar, the words of welcome which we have just heard remind us that it is good to be here, and when we shall have enjoyed the hospitalities which are promised us, I trust that ever in the future we will be able to say, "I was glad when they said, let's go down to the city by the Gulf."

Mr. President and representatives of the Galveston Bar, in this our home-coming, gathering again beneath our roof tree, by the side of the sea, where the song of the siren is heard, where

the keys are not tendered us because they are ours, we feel sure that the latchstring hangs upon the outer side. We indeed do not feel that we are strangers and aliens. We are not alien, because Galveston belongs to Texas. (Applause.) Her splendid achievements are a part of the glorious history of this State. With her sorrows we have sympathized. In her prosperity we rejoice. When you accomplished here what the Danish kings sought in vain, when you built that splendid sea wall and said to the ocean's waves, "Thus far shalt thou come, and no farther," from Texarkana to El Paso, from the Rio Grande to the northern confines of the Panhandle, we pointed with pride to Galveston and said, "See what a Texas city can do." (Applause.)

Yes, Galveston belongs to Texas. It is our seaport, through which we send the golden grain that feeds the people of other lands, and the fleecy staple that clothes the world. But while Galveston in a general and broad sense belongs to Texas, we recognize the fact that in a peculiar sense it belongs to the people of this city of the present generation, for your indomitable energy and pluck have created her. We did not need your splendid causeway, that rivals the Colossus that bestrode the sea at Rhodes, to connect us with your affections. We are proud of Galveston and proud of the achievements of her people.

Walking this morning upon your shore, looking out upon the blue water, where each wave breaking in the sunshine seems to lift its head for a smile from this beautiful island, the thought occurred to me that Galveston is the bride of the Gulf. It was not the Gulf that brought ruin in your midst. It was the cruel storm of the West Indies, that like a wild beast sprang from its lair to bring ruin and wreck to the lovely and the fair. The Gulf loves the Island and kneels in adoration at her feet. He decks her there with shells and retires apace to see how fair she looks, and again runs up to kiss her. Of this union of the Gulf and the Island there has been born a child—Commerce—to which this land, from the sea to the far-off Dakotas, pays glad tribute, for whose coming the British Isles and the shores of Europe look with gladness, and which, when the Panama canal is finished, will hold in its grasp the trade of the Orient. (Applause.)

Citizens of Galveston, there have assembled in your midst to-day, the members of the Texas Bar Association, whose duties



require of them to stand in the temples of justice and see that legal rights are accorded to all men, without which no country can be prosperous, and no people can be happy. In the address of welcome which has just been delivered, and in the good things that have been promised, we feel sure that you have extended to us a welcome warm from the heart, as free and unlimited as the broad sweep of your waters—not limited even by a differential. (Applause and laughter.)

THE PRESIDENT: Our next order of business is the report of the board of directors, and W. W. Searcy, chairman, will make the report.

The following report was read:

GALVESTON, July 2, 1912.

*Hon. R. E. L. Saner, President Texas Bar Association:*

The Board of Directors beg leave to report that the following persons have applied for admission to membership in this Association and the Board of Directors having duly considered the applicants and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in the Association.

Those recommended are as follows:

Joseph H. Aynesworth.....	Childress.
E. T. Branch.....	Houston.
Alex S. Coke.....	Dallas.
Perry G. Dedmon.....	Fort Worth.
Robert L. Holliday.....	El Paso.
F. D. Minor, Jr.....	Beaumont.
J. B. Ryan.....	San Antonio.
W. L. Davidson.....	Georgetown.
Morris B. Harrell.....	Greenville.
John W. Kincaid.....	Austin.
H. L. Carpenter.....	Greenville.
John W. Gaines.....	Bay City.
Wm. O. Bowers.....	Giddings.
Richard S. Bowers.....	Caldwell.
Thos. B. Botts.....	Brenham.
W. H. Bassett.....	Brenham.
A. G. Lipscomb.....	Hempstead.
Richard R. Lewis.....	Bay City.
J. W. Munson.....	Angleton.
Wm. E. Austin.....	Bay City.
W. C. Carpenter.....	Bay City.
J. L. Darrouzet.....	Galveston.
T. J. Holbrook.....	Galveston.
S. A. McMeans.....	Galveston.

Geo. T. Burgess.....Dallas.  
 L. C. Huvelle.....Dallas.  
 Alex F. Wiesberg.....Dallas.

Respectfully submitted,

W. W. SEARCY, Chairman.

THE PRESIDENT: You have heard the report of the board of directors on new members. What shall be done?

MR. WILLIAMS: I move its adoption.

The motion was duly seconded and unanimously adopted, and the Secretary was instructed to cast the ballot of the Association for the election of the new members proposed.

President R. E. L. Saner then read his annual address to the Association, which was given close attention, and much applause. It appears in the Appendix in full.

The report of Secretary J. B. Cave was then read and approved and ordered filed by the Association.

#### REPORT OF SECRETARY.

AUSTIN, TEXAS, June 28, 1912.

*To the President and Board of Directors of the Texas Bar Association, Galveston, Texas:*

GENTLEMEN: Your Secretary respectfully submits the following report of his official transactions since July 1, 1911:

Your Secretary collected and received from 64 new members at Waco, as initiation fees and dues (\$5.00 each).....	\$ 320
By collections, dues from members from June 24, 1911, and including June 17, 1912, as shown by stubs of receipt books and entries to the credit of members and deposit in bank.....	895
Total .....	\$1215

Against which your Secretary takes credit as follows:

Paid the Treasurer, as per his receipt attached.....	\$1215
--	--------

Your Secretary reports that the Proceedings for the year 1911 have been printed and have been mailed to the members of the Association as well as to the different State Bar Associations. Cloth bound copies were furnished to the members in good standing.

The membership at the 1911 report totaled 620; while at the time of making this report the membership is 682.

Respectfully submitted,

Approved:

J. B. CAVE, Secretary.

W. W. SEARCY, Chairman Board of Directors.

\$1215.00

AUSTIN, TEXAS, June 28, 1912.

Received of J. B. Cave, Secretary of the Texas Bar Association, the sum of twelve hundred and fifteen dollars, being the amount collected by him from June 24, 1911, to and including June 17, 1912, for the Texas Bar Association.

WILLIAM D. WILLIAMS, Treasurer.

The report of Treasurer W. D. Williams was then read to the Association, and it was ordered filed by the Association and published in the proceedings.

It is as follows:

## REPORT OF TREASURER.

AUSTIN, TEXAS, June 28, 1912.

*To the President and Board of Directors of the Texas Bar Association, Galveston, Texas:*

GENTLEMEN: I beg to submit to you my annual report as Treasurer of the Texas Bar Association, showing receipts and disbursements since July 1st, 1911, and the balances on hand then and now in the treasury of this Association, as follows, to-wit:

*Receipts.*

July 1, 1911, balance then on hand as per report of that date .....	\$2,275 51
June 28, 1912, amount received from Mr. J. B. Cave, Secretary .....	1,215 00
Total to date.....	\$3,490 51

*Disbursements.*

July 5, 1911, President's expenses arranging for Waco meeting .....	\$ 25 00
July 6, 1911, Association's share of expenses of Waco meeting .....	75 00
July 6, 1911, printing, etc., at Waco meeting and subsequent dates and other places.....	37 35
July 7, 1911, expenses of Hon. Martin W. Littleton at Waco meeting .....	103 55
July 11, 1911, postage stamps for Secretary at this and later dates.....	104 00
July 12, 1911, and later dates, express charges paid by Secretary .....	1 55
July 6, 1911, stenographic work, mimeographing, addressing envelopes, etc. ....	18 50
October 31, 1911, reporting Waco meeting.....	50 00

April 9, 1912, printing proceedings of Waco meeting..	504 45
June 25, 1912, Secretary's salary from July 1, 1911, to July 1, 1912 .....	120 00

Total disbursements .....\$1,039 40

Balance in treasury.....\$2,451 11

Vouchers for the disbursements are submitted with this report.

The receipts for the year are \$175.60 in excess of the amounts paid out.

I am informed that the liabilities of the Association have been paid to date, there being nothing unpaid which has been presented.

Respectfully submitted,

WILLIAM D. WILLIAMS,

Treasurer Texas Bar Association.

O. K. W. W. SEARCY,

Chairman Board of Directors.

The address of Hon. Thos. H. Franklin, of San Antonio, on "The Recall of Judges," was delivered to the Association. It was well received and given close attention and approval. The address is published in full in the Appendix.

MR. SEARCY: I desire to state, at the request of the local Galveston Bar, that all of the members, and all of the ladies, children and friends of the members of this Association, are invited to go out on a boat ride on the Gulf this afternoon, and are requested to be at the foot of Tremont street at 4 o'clock. We will have to have a meeting tonight. We want to get through with the work on hand, but by adjourning now we are not going to be able to get through with the work that was mapped out for today, and I know we want to go out on that boat ride. (Applause.)

MR. BURGESS: I move that we take a recess until 8:30 o'clock tonight.

The motion was seconded and unanimously adopted.

## JULY 2, 1912—NIGHT SESSION.

THE PRESIDENT: The convention will come to order, and we will take up the program where we left off this morning. I believe that the next order on the program is the report of the Spe-

cial Committee on Judicial Reform, of which committee Judge Thomas J. Brown of Austin is the chairman, and I will ask Judge Brown if he will kindly make his report now.

JUDGE BROWN: The report is in writing, as follows:

REPORT OF SPECIAL COMMITTEE ON JUDICIAL REFORM.

AUSTIN, TEXAS, June 3, 1912...

*Hon. R. E. L. Saner, President of the Bar Association, Dallas, Texas:*

SIR: As Chairman of the Special Committee on Judicial Reform, appointed by you under resolution of the Bar Association at the city of Waco in 1911, I beg to report:

I gave written notice to each member of the committee to assemble at the city of Austin on May 2, 1912, to consider the subjects committed to the said committee. At this meeting there were present the chairman, Judge J. C. Townes, Judge A. J. Harper, Judge B. H. Rice, H. C. Carter, W. W. Searcy and E. C. Kreuger.

After considering the subject the committee determined that it was impractical for a committee to accomplish anything of value in the way of general reform for want of time, and unanimously instructed the chairman to report that the committee recommend to the Association to pass proper resolutions requesting the Legislature to provide for the appointment of a commission of five lawyers to reconstruct and reform the rules of practice and procedure in the courts of this State, and that ample time be allowed said commission and a salary adequate for the services to be rendered be appropriated.

The committee unanimously agreed to recommend to the Association that it appoint a committee to present to the next Legislature the bill which will be found printed in the published proceedings of the Bar Association of Texas at Waco, July 4 and 5, 1911, beginning at page 23 and ending on page 26. The committee are of opinion that the bill if enacted into law would relieve the congested condition of business in the Supreme Court and provide adequate means for preserving the uniformity of our decisions.

It was the unanimous opinion of those members of the committee who were present that the judicial system provided for by the present Constitution is ample for the disposition of the business of the courts and can be adjusted to meet the needs of the State hereafter; that there is no necessity for an amendment to the Constitution, as the Legislature can correct existing evils and give necessary authority to all of the courts under the present Constitution, which is flexible enough to permit the development of the system of courts so as to meet future needs.

Respectfully submitted,

T. J. BROWN, Chairman.

JUDGE BROWN: The situation is that we had 509 applications for writs of error on hand October 1, 1911, or filed from October 1, 1911, to June 22, 1912. We have disposed of the applications, except a few that came in just a few days before we adjourned. We made it a point to dispose of all the applications that were filed prior to adjournment, except two or three applications, the character of which was such that we did not have time to maturely consider them, therefore, we let them go over, but the applications are practically off the docket. It leaves on the docket 166 cases undisposed of, to begin the next term with. We are that much behind, and if we write eighty-three opinions a year, then we are just two years behind; however, if we have such increase of applications next year, as we had the last year, we can not write so many opinions, and will of course have more cases undecided. Therefore it does not require any argument to show that the Supreme Court will be blocked, so that the granting writs of error will mean that the decision of the case will be delayed until the value of the subject of the controversy is very largely lost, for two years' time will be practically the shortest time in which you can get a hearing. Conditions will grow worse each year.

As I have stated before, we wrote eighty-three opinions during last term. There have been quite a number of vexatious mandamus cases, which consumed much time, and in my opinion the Supreme Court ought not to be taxed with that work. There is no reason why it should not be placed in the jurisdiction of the Court of Civil Appeals or the District Court. Imposing upon the Supreme Court such cases has much to do with the blocked condition of our docket. The effect of giving to the Supreme Court that jurisdiction is that A applies to the Land Office for any service and that he and the Land Commissioner disagree, or they do not know just what the law is. A will apply to the Supreme Court for a writ of mandamus in order to learn what the law is concerning the sale of a certain section of school land. The Supreme Court is made an advisory board to the heads of departments. They give us a great deal of work, consuming much time. If that is considered of more importance than the litigation of the country, then you might leave it where it is, but when they come to us for a writ of mandamus we have to pass

on it then. They say that the State wishes to sell school land, and here is a question about which the officers differ, and that we must decide this matter. Now, consequently, the mandamus has the right of way, and it does not take any little time, either. It takes a good deal of time. It takes more time for the reason that these mandamus cases are out of the ordinary line of work of the court. You gentlemen know, especially you who have been on the Bench know, that after a man has been on the Bench a number of years there are a great many questions that come in the ordinary course of cases that do not require much investigation. Any judge who has served for a number of years knows that he gets so that he does not have to go to any very great or serious study about many cases that come before the court. But in a mandamus case it is often claimed that the act in question has made a change in the former law, and they change it every time they meet in some way. (Laughter.) Each session enacts some new laws, and we have them to construe before the heads of the departments will proceed. I state these things to show you how that court is over-taxed with work. The court can not do the work. The plain, straight English is, that we can not do it, and no three men can. So the question arises, how shall the court be relieved, or will you relieve it at all? Will you leave it as it is until the business shall accumulate as it did before? When this system was organized the old Supreme Court had two commissions of three members each to aid them for six years, but they were about 1200 cases behind, and it won't be a great many years before the present Supreme Court will be as badly behind as it was then. The policy ought to be to do something so as to prevent that accumulation of business, and not to let it lie there until it is almost worthless to anybody interested in it, and the question before us now is, what can we do?

With respect to the bill that is offered, the sixth subdivision of it is the one, I think, that causes the principal objection to it. There is no question that it is very indefinite in its provisions, and it leaves very largely to the discretion of the Supreme Court, to determine the question of jurisdiction. I believe myself that the bill would operate well, that it would relieve the present trouble. I believe it would give the court jurisdiction of many matters of which it has not now jurisdiction. In other words,

the effect of this bill is not to limit the jurisdiction of the court by the amount in controversy, nor by the subject matter of the suit, but the question of jurisdiction is, in the main, in the sixth subdivision, by which questions of substantive law are left open for the consideration of the Supreme Court without regard to the amount involved, or the character of the controversy. If the question is one of substantive law the Supreme Court would have jurisdiction, otherwise would not. Other jurisdiction is definitely prescribed by the bill.

I presume to state a few facts, so that those who have not heard the bill will have an opportunity to discuss it. The proposition is that whenever the decision of one of the Courts of Civil Appeals is erroneous upon a proposition of law which will, as stated there, impair the jurisprudence of the State, we have jurisdiction. What does that mean? It is indefinite, and I think it better to amend it so as to read, that the Supreme Court should have jurisdiction of the decision of the Court of Civil Appeals, where erroneous upon the substantive law of the case. Now, I understand the substantive law of the case means the law which secures a right to a party, as distinguished from the procedure in applying law.

I do not think the Bar appreciates the work that the Supreme Court has to do, and I will candidly tell you of it. If you will excuse me I will say that it has occurred to me that in a number of cases, when a lawyer files his suit in the district court he is headed for the Supreme Court. He starts right in the beginning with a view of going to the Supreme Court, and so works all the way through, and it is evident from the methods used. When the application comes in, for instance, they start in by saying that the district judge erred in impaneling the jury, that this juror Brown was not a qualified juror, and therefore should have been excluded. They get beyond that, the jury is impanelled, then it is claimed the jury talked improperly while they were going out considering the case. If you get by that, then it is plain that the witness being examined was disqualified. The Supreme Court is required to try that case as the district judge did. Every question that is presented to him is presented to the Supreme Court, and we have to decide all, beginning with the impaneling of the jury and continuing to



the final overruling of the motion for rehearing. You can see what labor there is in it, and when you consider that there are 500 cases, three men to sit down and work out in nine months, besides much other business, you must know it is more than three men can do. Consequently, we believe, and so submit, that the final jurisdiction of the Court of Civil Appeals ought to be enlarged, that more questions should be finally decided by those courts than is now permitted, and thereby limit the jurisdiction of the Supreme Court. If that were done the Supreme Court would have an opportunity to dispose of cases involving other matters. If there were a limitation upon the procedure, so as to relieve the Supreme Court of the labor of examining, considering and deciding all the questions that are raised in the course of a trial, the work would be facilitated. An application often times contains more than a whole record did when I was deputy district clerk and made up the records with my pen.

The point, then, is simply this: We must either limit the jurisdiction of the Supreme Court, or must have another alternative—to let your cases stay where they are and wait until the court gets to them—let them bank up there, and accumulate, until the delay becomes destructive of rights, or you must amend the Constitution and enlarge the court. My own opinion is that the system as it was originally organized is the best that can be had for Texas. I believe if the Courts of Civil Appeals were given final jurisdiction of all matters of procedure, requiring the Supreme Court to preserve the uniformity of decision on questions of substantive law, it would be a better system. That is what the court was organized for, and the truth is there is no reason for the Supreme Court to exist except for that purpose. I say unhesitatingly that I believe if that were done, and the Courts of Civil Appeals were given final jurisdiction in these matters, it would finally be as satisfactory as the present methods. There is a disposition to go to the court of final jurisdiction and if we were to reverse the order and the Court of Civil Appeals were made the court of last resort, all litigants would be just as anxious to go to the Court of Civil Appeals as they are now anxious to go to the Supreme Court. That is human nature. We try for the last point. I believe a lawyer

has a right to contest every material question, but we should secure a more expeditious administration of justice. It is not justice to a party to have a case tied up for years, waiting and waiting for the time to come for a hearing.

I suggest another thing. Judges are men, I don't care whether they are the judges of the District Courts, the Courts of Civil Appeals, or the Supreme Court. They have their weaknesses, and are liable to the same influences. When three judges of the Supreme Court sit down with a stack of cases piled up for years it is like a lead on their shoulders and inevitably the time will come when that court will get in such a hurry for the disposition of the business, and will feel the pressure of that accumulated business until they will not take the necessary time for the mature consideration of each question. The Supreme Court ought to be so preserved that it will have ample time, because its main purpose is to correct errors and to preserve uniformity of decisions, which can not be done by hurried men. I care not how able they may be, no judge is reliable in a hasty opinion. That is the result of all experience. I have been twenty years at work on the Supreme Court with some of the best judges that have been on that court (I began with Judge Slayton and Judge Gaines, and I have been associated with seven, all good judges) and it is my deliberate opinion that no man can do justice on a court of last resort and write reliable opinions, when he is pressed all the time by long-delayed cases with this great body of work pressing down on him continually. Necessarily he becomes anxious to dispose of the business. I state to you gentlemen in all candor that I have felt at times that I was just necessarily bound to lay down the work I had before me and go to work at something else, that I must make progress. I had to make an effort to prevent too much haste. The judge who has the final jurisdiction of questions of law in a great State like this ought to have time for mature reflection. He can not gather authorities, read them over, passing hurriedly from one to another, and be prepared to render a decision upon important questions. It requires time to digest the case in order to make a proper application of the law to the facts. Up to this time our Supreme Court has maintained a good reputation for correct decision. But whenever the time comes that the

judge is so hasty, is so pressed, that he can not take time for mature consideration of questions, it will be less reliable and lose its high standing. Don't you think so? I ask you, seriously, gentlemen, isn't that true—that your Supreme Court, upon which you must rely for the preservation of correctness and accuracy of decisions, will necessarily be driven to the point where it will be less reliable than it has been? There is no use to conceal it, or to evade it, for that is a fact that I believe will be demonstrated at an early time. I think the judges who constitute the court will resist it as far as men can, but I do not believe that human men are able to do it.

I had a statement prepared showing just what the court had done in the last nine months, and thinking I was taking the best means of putting it before the Bar I gave it to the Galveston News for publication, so that you would all see it.

I wish to say a few words on the proposed increase in number of the court. It is my opinion that to go beyond five members will make the court less serviceable than it is now. I believe that a court which exceeds five in number will not do as much business and do it right as the court of three, and my reason for it is this: The three judges all sit together on every application, and every assignment in an application is read and considered by the three sitting together, discussing and passing upon it. No question is decided except in that way. When cases are submitted we do not divide them out, and give so many to each judge, but each man does all the work he can, and before any opinion is written we all get together, go over every question in the case again, and pass upon it, and agree upon it. So you see the work that it is necessary for us to do in order to be accurate. I hope that I will not give offense to anyone by this statement—I do not wish to—but it is my deliberate opinion that no court can be reliable that makes a decision by one man, and that wherever they fail to have a consultation before the opinion is written there is danger. Not long since I saw a statement from the Supreme Court of California that the Chief Justice divided the cases submitted, giving to each associate an equal number, and each would prepare his opinion, placing it before each of the justices. If a majority signed the opinion it would be the opinion of the court. I saw a similar

statement in regard to the court in the State of Illinois. I do not think that is a safe proceeding, but it grows out of the fact that whenever you have a great number of men on a court, it is a difficult matter to get so many men to consider these questions at a time when their minds are unbiased. A man who forms his opinion and whose mind is fixed is not in a condition to yield to arguments or suggestions, therefore I believe that the court of three is the ideal court, the best you can have. Few men could do the business at the present time, but the State is developing and business is increasing rapidly, and if we had five judges it would not be many years until you would have to increase the number or change the procedure. My opinion is that if the Bar and the people of Texas wish to preserve the present jurisdiction of the court and put this work on the Supreme Court as it does now, there must then be some other provision made to dispatch business. My conclusion is that the best way would be to create a Supreme Court consisting of six judges, to sit in two sections of three each, each section to have jurisdiction as the present court, with the right of appeal to the court *in banc* on certain questions, and the right for members of either section to call for a decision of the full court—that is, the court *in banc*, all six of them sitting. I believe that it is better to have two sections of the court than to have all sit and work together. I do not believe it is good policy to have more than five judges on a court.

This is a question that is with us now and pressing for action. You may postpone action, but the question will go with you to your homes and you must meet it sometime. This is a better time than any time in the future. If the present condition is continued, business will be banked up until the people will take some steps to relieve the situation, and lawyers should take proper measures while they may.

MR. FRANKLIN: You have 166 cases undisposed of?

JUDGE BROWN: Yes.

MR. FRANKLIN: Judge Gaines told me that to increase the judges to five would increase the work done about fifteen per cent, that is, to the extent that the additional judges could write opinions, and that you would not get any greater benefit

if you increased it to seven or nine, because the hours of consultation would be lengthened.

JUDGE BROWN: Yes.

MR. FRANKLIN: Then if you increase it to five, that is really only a temporary benefit?

JUDGE BROWN: It might facilitate business a little, but I doubt it. The only advantage would be in writing opinions, but every man who has been upon the court knows that three men will dispose of more business than five, and I believe it would be safer to have the two courts in two sections than to have five judges.

MR. LEWIS BRYAN: Does your report that will be printed in the morning specify the increased final jurisdiction you suggest that the Court of Civil Appeals should have?

JUDGE BROWN: No.

MR. BRYAN: Have you any definite, specific suggestions to make as to what extent the final jurisdiction of the Court of Civil Appeals should be increased, or do you confine it to questions of procedure and practice?

JUDGE BROWN: No. The bill we have reported goes into that. For instance, where the Courts of Civil Appeals disagree the Supreme Court will have jurisdiction. Where the State is a party, where there is a Constitutional question involved, in that class of cases the court now has jurisdiction. There is one matter we ought not to have to pass on, and that is some of these certified questions that come from the justice court. We decide cases for the justice court on certified questions. When the jurisdiction of the Supreme Court attaches for a special reason, for example, because there is a dissent, or there is a conflict between the decisions of the courts under the present rules, we take jurisdiction of the whole case. The Supreme Court ought to be confined to the question that gives the jurisdiction. There is no sound reason why the granting of a writ of error, because it involves a question of the validity of a statute, should require the Supreme Court to try all the questions just as did the justice of the peace. The way cases are presented to the Supreme Court now puts upon that court the full burden of every case that comes to it, from the beginning to the end.

MR. CRAIG: Wouldn't it be good in the beginning to limit

or restrict the right of appeal to the Court of Civil Appeals? Why should a man who has a judgment against him on a promissory note have an appeal to the Court of Civil Appeals?

JUDGE BROWN: I would say that he should not have that, if that is all there is to it.

MR. CRAIG: Wouldn't that cut out a great deal of the burden on the Court of Civil Appeals? I am talking about reforming the entire judiciary.

JUDGE BROWN: If you start into that, I believe we ought to begin right down at the district court.

MR. CRAIG: It is a question of which they ought to have the final jurisdiction.

JUDGE BROWN: I have practiced before a good many district judges, and I never saw a judge that I preferred to a jury in my life. I would rather try questions of fact before a jury than before any judge, and I believe that while the jury ought to try the facts, they have no business trying the law of the case, because they do not know anything about what to do with it. If I had to make the law, I would have every case submitted on special issues of fact, and let the jury find the facts, and let that be final. If the district judge said they found contrary to the law on a given issue, or if there is an error in submitting an issue under the testimony, I do not believe you ought to set the whole verdict aside, or let the case go up to the Court of Civil Appeals, or Supreme Court, and be reversed and go back to be tried over. We oftentimes have cases where they say, "This is the third time this case has been to this court, or the fourth time it has been in this court," and just a short time ago we had one where it was the fifth time the case had been to the court. No such thing as that ought to occur. It is a waste of time, a waste of energy, and a waste of money. If you had the jury to find the facts of the case, then the court could apply the law to it, and if the district court did not apply it correctly, the Court of Appeals could correct it, and if they were wrong, the Supreme Court could correct the errors, and that would end the case. There ought to be but one trial in the district court. Of course, some think you have a right to try every question in your case as many times as you can get to a court, but I believe myself the trial

of the facts by the jury would give the best results in the way of finding the facts, and getting the facts for the court to apply the law to. When you tell a jury, "If you believe so and so, then you find for this party," the jury applies the law. There is a lot of human nature in a jury as well as in a judge, and when they go out a juror says, "If I find this way this man will lose, and if I find the other way that man will lose." That has a great influence at times. If you only submit to them the facts they do not know what will be the result. I believe juries generally try to do right, and if you submit the facts they will find the facts. You ask a juror if A did this and he will say yes, if the proof shows it, and then the judge is able to apply the law to these facts. But when you give it in a charge to the jury to apply the law, no court can correct the error, because there is no finding of fact, and when it reaches the Appellate Court for revision the judge says, "Well, I don't know just how the jury found on this. I do not know what was the effect of this issue." The truth is that there is no proper application of the law in the case when it is given to the jury in that way. Of course, I suggested a radical change, but it can be done under the present Constitution just as well as not, and my opinion is that for a general revision there ought to be a commission of good lawyers appointed, and give them plenty of time to revise our procedure.

JUDGE WILKINSON: Does your proposed bill take away the present jurisdiction of the Supreme Court arising from conflict of decisions? Does it take it away or leave it as it is now?

JUDGE BROWN: It leaves it as it is now.

JUDGE WILKINSON: And the same about certified questions?

JUDGE BROWN: Yes. I believe that the certified questions ought to be restricted to questions of which the Supreme Court has jurisdiction. I do not believe they ought to certify questions to the Supreme Court on matters about which it has no jurisdiction.

JUDGE WILKINSON: But the bill as drawn makes no change in that, I understand you?

JUDGE BROWN: No; that bill does not make any such changes.

JUDGE CRAIG: If certified questions were restricted to mat-

ters over which the Supreme Court had jurisdiction, that would not relieve anything. Suppose the lower court had some question they needed information about, for the general practice, and they wanted the opinion of the Supreme Court, ought not they to have the advice of the Supreme Court on that?

JUDGE BROWN: I think not. If you do that you will make the Supreme Court decide all kinds of questions. They do now. The Court of Civil Appeals sometimes certifies questions that come from the justice court.

JUDGE SPEER: The statute authorizes it now, doesn't it?

JUDGE BROWN: Yes; they have the right to do it. We are not complaining of it.

JUDGE CRAIG: But if they needed information they ought to get it.

JUDGE BROWN: Well, I think they ought to get it out of the law books. That is where we have to get it.

JUDGE CRAIG: Which book? There are so many books they do not know which one to read.

JUDGE BROWN: Well, they know as well as we do. My own opinion is that the Bar simply underestimates the Courts of Civil Appeals. (Applause.) I have been reviewing their decisions now for twenty years. I will be plain about it. I believe if they were the courts of last resort, so that a lawyer could not go any higher, they would give just about as good satisfaction as the Supreme Court gives by its decisions. (Applause.) And, I say, further, that I am not so well satisfied that sometimes you do not lose by going up to the Supreme Court. (Laughter.) We do the best we can. (Laughter.)

MR. MORRISON: How is it you grant so many writs of error if you have got so much confidence in the Courts of Civil Appeals?

JUDGE BROWN: Why, we grant so many because we may be wrong sometimes. (Laughter.) I do not believe the Supreme Court is infallible. I have been working with the judges a good while, I know them fairly well, and I think I know myself. Of course, when we grant a writ we do it because we think there has been an error committed, but let me tell you, we have had 509 cases that have been before us, and we only granted about 100 writs, one out of five.



MR. MORRISON: If the opinion of the Courts of Civil Appeals had been final there would have been one-fourth of them that would have been wrong.

JUDGE BROWN: They might be wrong after we decided them, too.

MR. MORRISON: But where you have granted those writs of error, how many have you affirmed?

JUDGE BROWN: We have affirmed quite a large percentage of them. I will tell you why we grant them and why we affirm them. We grant them, in the first place, because it is a rule of our court and has been all the time, that if one judge out of the three thinks the writ ought to be granted it is granted. We grant writs of error in a large measure, where we affirm them afterwards, because there are questions that we haven't got time to examine satisfactorily. When we get an application for a writ of error, if we have a reasonable doubt that the decision is right, we grant it and then examine it later, but frequently affirm the judgment. That, of course, makes it safer for all litigants. I believe, gentlemen, this is a question that ought to be considered with much care, and it is one you have just got to take care of. You have got to think about it and do something with it. It is impossible for our Supreme Court, as it is now, to do more than I have shown you we can do, and it is getting worse all the time. We will have more applications. We have eight Courts of Civil Appeals in session, disposing of cases rapidly, and we must have more applications next year than we have had in the past. The consequence will be that we will just be piling up work in this condition, and if the lawyers won't take hold of this matter and make some reform—and I beg your pardon again for saying it—the time is not far distant when the people of this country will take hold of it. Matters are going at that rate that there is going to be something done by somebody, and if the Bar leaves it until some man goes out before the people and stirs them up, we don't know what kind of a revision we will have. I believe it is wise for the lawyers to take this matter into serious consideration and try to arrive at some solution of it.

I believe I have said all I ought to say, and about all I could say. I thank you gentlemen for your attention to it. I have

given you the benefit of all the experience I have had, and I work with as good lawyers as ever have been on that Supreme Court, and I work with as industrious men as ever worked there, or can work there, and I know that the capacity of that court has been reached and over-reached; the condition must grow worse instead of better.

MR. W. H. WILSON: Mr. Chairman and gentlemen, I do not wish to trespass upon your time. The plan suggested by the distinguished Chief Justice may be the best way out of the difficulty, but it has this difficulty. It practically makes the opinions of the Courts of Civil Appeals final in all questions of administering the law. I do not know whether that would meet with the approval of either the Bar or the people of the state. We have so many Courts of Civil Appeals that in time there will grow up a number of systems of more or less divergent administration of the law. Now, not every difference in the system of administering the law by the Courts of Civil Appeals constitutes such a difference in decisions as to give rise to a right to review the matter in the Supreme Court. The plan suggested, I think, is about that that now prevails with respect to writs of error from the Supreme Court of the United States to the Circuit Courts of Appeals. I understand that unless some matter of great public importance is involved, the Supreme Court of the United States seldom grants a writ of error in ordinary cases to the Circuit Courts of Appeals. I was informed by a clerk of one of the Circuit Courts of Appeals that they granted one application out of about 2,500. Now, I think there is a very simple and very plain method of relieving the labors of the Appellate Courts in Texas. Nearly every case of any importance is appealed from the District Courts and the County Courts to the Courts of Civil Appeals. The great mass of them are affirmed. Most of them ought never to have been appealed. If the right of appeal to the Court of Civil Appeals was done away with, if no one could get into the Court of Civil Appeals except by a petition for writ of error to the Court of Civil Appeals, and if the opposite party could file an answer to that petition, three-fourths of the litigation that comprises the dockets of the Courts of Civil Appeals, a great deal of which goes into the Supreme Court, would not go into the Courts of

Civil Appeals, in the first instance. In a case of that kind the Courts of Civil Appeals, when they refused a writ of error, should be required to write a written opinion. If the applicant was dissatisfied the petition for writ of error, the answer to the petition, and the judgment of the Court of Civil Appeals refusing the writ of error, should go together to the Supreme Court. In 85 per cent of the cases the Supreme Court would have nothing to do but read those three documents and affirm the judgment. It seems to me that the great trouble about our litigation now is that such an immense amount of litigation that is tried in the *nisi prius* courts, and tried correctly there, has to be tried again in the Courts of Civil Appeals, although the attorneys taking the appeal could not state a case in a petition for writ of error that would be good on its face.

MR. J. W. TERRY: I do not think Mr. Wilson's proposition would relieve the Supreme Court. It would have substantially the same work to do that it has now. I agree with Judge Brown that we are all human, and we want to get to the highest court, if we can. I think not only the lawyers feel that way, but their clients do, and I have never been able to see any very great distinction between questions of procedure and substantive right when it involves your client's having to lose his property, or pay out his money, as the result of the litigation. I think one branch of the subject is just as important to him as the other. I, for one, favor the alternative proposition submitted by Judge Brown, that we should have a Supreme Court consisting of seven members, sitting in two divisions, the Chief Justice to have the power to assign the cases between the two divisions, and to sit in either division when one of the judges is disqualified or absent by reason of sickness or otherwise—the court to meet *in banc* only on Constitutional or other important questions. I believe that system has been tried successfully in other States, and I think it would work here, and I believe if such an amendment were submitted by the next Legislature the people would adopt it. The bill as presented was passed up to the special session of the Legislature and was turned down, and I am strongly inclined to the opinion it will be turned down in that form again, because the Legislature is largely composed of lawyers in both its branches who have their own views

about it, and they are going to be bombarded with the views of people, both lawyers and clients, who have this human feeling in them of wanting to get to the highest court, as Judge Brown states. Now, there is another practical reason for increasing the number of our Supreme Judges, the present number is not sufficient to accommodate the aspirations of a number of our fellow lawyers at the Bar, which ought to be gratified. I think. (Laughter and applause.)

JUDGE C. H. JENKINS: This bill was presented at the last meeting of the Association, at Waco, and pretty thoroughly discussed. As I recall it, there was no member then present who defended the sixth article of this bill. I have not discussed the question with any lawyer of this State who has defended it. Judge Brown has not defended it. On the contrary, he has stated his views, which, if carried into effect, would eliminate the sixth section of the proposed bill. No stronger argument in my judgment could be made against it than the statement of the condition as we have had it from Judge Brown. The court is already two years behind the docket and the docket gaining on the court. I take it there is not before us now for discussion what should be done with reference to the Courts of Civil Appeals. That is another question, or only a question here incidentally. As to increasing the Supreme Court, that is a Constitutional question. But the question now before us, as I understand it is, shall we recommend to the next Legislature the passage of this bill as it has been read?

What relief will this bill give? Will it not rather increase the burden of the court? After having provided in section one that the Supreme Court shall have jurisdiction in those cases in which the judges of the Courts of Civil Appeals may disagree upon questions of law material to the decision; and those in which one Court of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court, upon any such question of law; those involving the validity of a statute; those involving the revenue laws of the State; those in which the Railroad Commission is a party; we then have in the sixth section those in which, by proper application for writ of error, it is made to appear that the Court of Civil Appeals, in the opinion of the Supreme

Court, has erroneously declared the law of the State in such a way as to materially injure its jurisprudence, in which case the Supreme Court, in its discretion, may take jurisdiction for the purpose of correcting such error.

Now, I think it would be very difficult for any one to say what erroneous decision upon questions of law did not affect the jurisprudence of the State. What is meant by that? It can, it seems to me, mean no more than that in the opinion of the Supreme Court the Court of Civil Appeals is in error upon some question of law, and, therefore, the Supreme Court is given jurisdiction, not only where it now possesses it, but in a large class of cases where now it has no jurisdiction. This bill entitled, "A Bill to Relieve the Supreme Court," reminds me very much of the position of the Republican party with reference to revising the tariff. It revised the tariff, but revised it upward instead of downward. I am opposed to the adoption of this sixth clause. I believe with Judge Brown that the purpose of the Supreme Court, under our system of intermediate courts, is to maintain harmony in the various courts of appeal, and I do not think that court should be given jurisdiction except—I am not speaking now of mandamus and things of that kind—I do not think it should be given jurisdiction except where the Courts of Civil Appeals have disagreed one with the other upon questions of law, or have been unable to agree among themselves. In human affairs it is not possible to attain perfection, and if we had still another court of appeals, as we have in some cases—cases involving Federal questions, where cases go from our Supreme Court to the Supreme Court of the United States, and our Supreme Court is reversed—and if there was a court beyond the Supreme Court of the United States, we would still have reversals, and perhaps properly so, but there must be an end to litigation in the practical affairs of life. A man is entitled to a trial in the proper forum of his country, before the judges and before the jury. I believe he ought to be entitled to an appeal. I shall not now discuss the question of whether that appeal should be as a matter of right, or upon a writ of error. But when he has had his trial in the District Court or County Court, when he has had his appeal to the Court of Civil Appeals, that

ought to be an end of it, in my humble judgment, except to have this higher court as a matter of obtaining harmony in our decisions. If it can be said, and truly said, that the Courts of Civil Appeals are not capable from a legal standpoint of finally deciding these questions, make them the court of last resort and the people will see to it that men are put upon those benches who are capable of properly deciding cases. When it becomes the court of final resort, all the responsibility rests upon it that now rests upon the Supreme Court, and with a Supreme Court to prevent our decisions getting at cross purposes, so that we do not know what the law is, we are just as liable to attain justice as we are under the present system. Mr. Chairman, I move that section six be stricken from the proposed bill.

JUDGE BROWN: I want you to indulge me a minute. Judge Jenkins has told you this would increase the business of the Supreme Court, but he did not tell you how it would increase it. I would like for him to tell you how it would increase it, because if it will we do not want it. We have got more business now than we know what to do with.

JUDGE JENKINS: I will tell you. It will increase it by giving it jurisdiction in cases that may originate in the justice court, by giving it jurisdiction without reference to the amount involved. You have not that jurisdiction now. It will give you jurisdiction in boundary cases. You have not that jurisdiction now. It will give you jurisdiction—I believe you have not jurisdiction in divorce cases now—in that character of cases. You have not jurisdiction now in reversed cases. Now, the only reply I can see to that is to admit the fact, but to say that in some other way it will decrease your jurisdiction. We need the decrease all right, but we do not want it offset by an increase, and my answer is that it increases it by giving you jurisdiction in matters in which you have not now jurisdiction.

JUDGE BROWN: Now, just a few minutes. This is an important question. Judge Jenkins misunderstood me if he understood me to say that I did not endorse this sixth paragraph. I said that I believed it was too indefinite in its present form, and that it ought to be expressed, for instance, that it would have jurisdiction where the substantive law of the case had been

improperly decided by the Court of Civil Appeals. The substantive law means the law upon which the man's right depends. What is loading us down is not the main question in the case. We are not loaded down with the question as to the man's right to recover, but we are loaded down with the details of a trial, beginning at the beginning, and having to work it all through. That is what is the matter. But if the Supreme Court is relieved of that, then they could take jurisdiction. I tell you, I know something about what the business of that court is. As to a boundary case, we do not average one in a year. We do not average one in a year.

JUDGE JENKINS: Is there anything in this sixth article which limits you to the substantive law? Doesn't this sixth article give you jurisdiction in matters of procedure as well as the other?

JUDGE BROWN: My suggestion is that that be amended.

JUDGE JENKINS: But you have not offered any such amendment, and I am arguing about this bill as it stands. How would this affect you as it stands?

JUDGE BROWN: The trouble about the present expression is that you can not tell just exactly what it means. When a man came to ask for a writ of error he would be in doubt as to what that means, and it would take the court a good while to settle that by decisions, and I believe we ought to amend this bill, and I suggested that, and suggest it again, that we amend this article, and instead of saying, "where it will injure the jurisprudence of the State," that it ought to be, "When the Courts of Civil Appeals, or any of them, has erroneously decided a question of substantive law in the case, that is, that affects the right of the party to recover." That is what I understand by substantive law. That relieves us of the details of a trial. Now, Judge Jenkins, of course, has his views about what would be the result. My experience in the work there satisfies me it would not increase the work of the court, but would greatly relieve it—in fact, would afford the necessary relief. Now, as to these other matters: We have not jurisdiction in divorce cases. We would have jurisdiction in that case simply if there was a question of law upon which the right of the party to have a divorce depended, if there could be a question of that

kind. It is a hard matter to see where you could get a question of substantive law in that kind of a case, for the statute regulates that. It is just simply the law upon which the case rests. That is the question of which the Supreme Court would have jurisdiction. Judge Jenkins has already moved to strike that article out. I believe I will offer a substitute, to strike out that portion of it, and to amend it by making it depend upon the substantive law, where the substantive law of the case has been erroneously decided.

MR. CRAIG: How would it do to put there "substantial rights of a party?"

JUDGE BROWN: I do not think that would be any more definite than the other. The substantial rights of the parties mean the right to recover.

MR. CRAIG: Yes, but "substantive law"—nobody knows what that is.

JUDGE BROWN: It is pretty well defined by the law books. Black's Law Dictionary gives a very definite definition, and says it is the law upon which the right to recover depends. But I want to say a few more words about the difference between the present law and this bill. If the Court of Civil Appeals decides a question wrong in which a man has only one hundred dollars at stake, I do not see any sound principle why that question of law should go improperly decided, any more than if there were \$1,000 or \$10,000 in it. There is no difference and I do not think there ought to be.

MR. MORRISON: It will be made a precedent in a \$100,000 case?

JUDGE BROWN: Yes, it is the same principle. It does harm, and it affects people to whom \$100 is as much as \$10,000 is to some other man. I do not believe in this discrimination between the rights of men because one has \$100 invested and another has \$100,000 invested. I do not think there is any sound principle in it.

JUDGE WILKINSON: What would be your objection to the bill with that sixth clause stricken out, as Judge Jenkins suggests?

JUDGE BROWN: It would not give us any jurisdiction at all.

JUDGE WILKINSON: Wouldn't it give you all the jurisdic-



tion necessary in order to preserve the harmony of the decisions of the State?

JUDGE BROWN: Yes; but you know if we just simply had to sit down there and decide questions where they disagreed we would rust. They do not disagree frequently. (Applause.)

JUDGE WILKINSON: Is there any reason, except the danger of disturbing the harmony of decisions of the State and getting cases in conflict, why the Courts of Civil Appeals should not be made final in all their judgments?

JUDGE BROWN: I do not see any sound reason why we should not abolish the Supreme Court altogether, if all we had to do was to decide cases where they disagree. I do not think we would have any practical use for it.

JUDGE WILKINSON: Well, I want to make a few remarks, and I won't ask any more questions.

JUDGE BROWN: I believe the proposition is just this, that there is a difference in the courts in one respect only; that is, that the Supreme Court, if it was properly arranged, would have more time to devote to the investigation of important questions than the Courts of Civil Appeals have in the great mass of business that is on them, when they have to examine the facts. I do not see, myself, that there is any sound reason for the Supreme Court's existence simply to harmonize these decisions. There is just one more suggestion: If a decision of the Court of Civil Appeals is wrong, if it is erroneous, and you wait for a conflict in opinions, somebody else will suffer. We have cases in which an opinion is delivered, but it does not get to the Supreme Court until finally there are several cases in which the courts have followed it, and finally it comes up before us for decision. With this bill, as soon as the decision is made, if it is wrong, the party could have it reversed and correct the error before it affects another case. That is the advantage of it, instead of having decided another case wrong and starting out on a line that would be doing injury to others.

JUDGE WILKINSON: I believe Judge Jenkins' motion has not been formally seconded, and I would like to second it, and I would like to make some remarks about it.

MR. STUBBS (in the chair): The motion is now before the house as made by Judge Jenkins, that the sixth subdivision be

stricken out. It appears under the proposed amendment of Article 940.

JUDGE CLARK WREN: I second the substitute of Judge Brown, to use the term "substantive law." That substitute is also before the house. The question originally before the house, as I understand it, was the adoption or rejection of the bill, for which no motion had to be made, because the committee was presenting that. Now, do I understand that if we vote for Judge Jenkins' amendment it carries the adoption of the balance of the bill, or recommendation as amended, or not?

MR. STUBBS (in the chair): I would not think so, offhand. I would think after the bill has been amended there should be a motion for its adoption.

JUDGE JENKINS: Judge Wilkinson, suppose, if they wish to perfect this bill, that we withdraw the motion until they get through with the amendment and see whether we still want to reject it. This is offered in the shape of a substitute, but if that would cut off the motion to strike it out after it is substituted, it would hardly be proper matter, and I do not know whether it would be held in parliamentary usage to do that. For the present, if Judge Brown wishes to offer an amendment, I will withdraw the motion, and we may renew it or not later.

JUDGE WILKINSON: Very well.

MR. STUBBS (in the chair): There being no objection the motion of Judge Jenkins will be withdrawn, so the only question before the house will be the adoption of the amendment offered by Judge Brown.

JUDGE WILKINSON: Just a word upon that. I am heartily in favor of that if the clause is to stand, for the reason that I entirely agree with Judge Jenkins, that if the clause is adopted in its present form, and without that amendment, it increases the labor of the court, instead of decreasing it. It gives to the court only a discretion to refuse a writ of error in some cases in which it would now be compelled to grant it under the law. That would leave it fewer cases to write opinions about. On the other hand, it would immensely increase the number of cases in which it would be called upon to pass upon the applications for writs of error. It would increase its jurisdiction. It would give it more work to do in every way, outside of the

mere writing of opinions upon cases where writs of error have been granted. I say this with very great reluctance, to differ with the opinion of the Supreme Court on a matter which they have so carefully considered, but without this amendment I can not see how the Supreme Court would be relieved a particle from its labors, and on the motion to strike out clause six, if that motion is renewed, I shall have something more to say.

JUDGE BROWN: You know, I have not got it written out, as to form.

JUDGE JENKINS: I would like to know just what we are voting on.

JUDGE BROWN: I would like to get it in shape, too.

MR. MACO STEWART: While they are writing this amendment I have something I would like to say on this subject. To begin with, I am perfectly willing to follow the lead of this committee. I believe that a man who has had the experience that Judge Brown has had, and who has studied this question as closely as he has, certainly knows more about it than those of us who have not studied it half so long, or with one-tenth of the experience, and I shall vote for that bill as he presents it, if it goes to a vote. However, I want to say to the whole Association, that I do not believe this bill goes half far enough. I am jealous of the standing of the legal profession. The time has arrived when the whole people are demanding a reform in our entire judicial system. It is going to be reformed. The time is coming when it is going to be reformed. You can not pick up an issue of a newspaper today that you do not find something in it on that subject, and I do not believe this goes far enough. I think the time has now arrived when this Association should take hold of the matter, and reform the whole procedure from the justice court right up to the Court of Criminal Appeals and the Supreme Court. I do not believe we should stop with this measure, and I believe the Association should leave it to the President to appoint a committee to go to the next Legislature and attempt there to meet the demand of the people. And it is not an unreasonable demand. In my experience—and I have not a specially wide experience—I have now before the Supreme Court two cases that have been there for over a year, and with no prospect of

their being reached for another year. One of those cases is a case in which the lawyers on both sides have used every endeavor to get a speedy conclusion of the litigation. The case was filed. A demurrer was interposed. There was no continuance. Within ninety days after the case was filed it was disposed of on demurrer, and that was three years ago, and the case is still a year away in the Supreme Court, purely on a question of law. Such conditions should not prevail. It ties up an enormous property interest. I have a case with my brother Wilson here, on which hang not less than twenty-five other cases, involving purely a question of law. We can not get anywhere with it. The case has recently been certified to the Supreme Court by the Court of Civil Appeals of this district, and I understand they will not reach that case for two years. Now, how long will this client of mine, who has twenty-five cases hanging on practically that one question of law, be content, and how long will it before his hallooing, and his justified hallooing, will spread to the voters? The voters themselves will take hold of this thing, and there is no telling what we will get out of it, and I believe it is up to this Association now to take some steps looking to have a proper revision made and a proper representation before the next Legislature to bring about a reform.

MR. MORRISON: A point of order. The gentleman's remarks are not germane to any question under discussion here.

MR. STUBBS (in the chair): They are germane as far as they apply to this particular bill, I think.

MR. STEWART: I believe that section six should be allowed to remain there. I think that is the best thing in the whole bill, because it leaves it absolutely within the discretion of the Supreme Court to right differences between the Courts of Civil Appeals, and when the Courts of Civil Appeals lay down an improper rule or decide a question improperly, for the Supreme Court then to step in and straighten it out. I believe that it is the only use of the Supreme Court. The Court of Civil Appeals is just as good, and just as sound, and just as trustworthy, as the Supreme Court. The only use or necessity for the Supreme Court is embraced in section six, which pro-

vides that in the discretion of the Supreme Court it can review the action of the Court of Appeals.

JUDGE BROWN: I have the amendment here. In the form in which it was reported by the committee, as I said before, the expression of the sixth clause is quite indefinite, and I am in favor of substituting for that sixth clause the following: "Those in which by proper application for writ of error it is made to appear that the Court of Civil Appeals has erroneously decided the substantive law of the case."

MR. STUBBS (in the chair): Do you omit the rest of the section?

JUDGE BROWN: Yes, sir; I think that the other part of it is omitted. I think the whole of that sixth clause ought to be stricken out, and this substituted for it, and my reason for it is that I am satisfied, upon hearing this discussion, more than I was before, that it will be more definite and more satisfactory to the Bar. I, therefore, offer it as a substitute for the sixth clause in the bill.

MR. STUBBS (in the chair): I understand there is a second to that motion.

JUDGE WREN: Yes, sir.

MR. STUBBS (in the chair): You have heard the motion, that section 6 of article 940 be amended so as to read: "Those in which, by proper application for writ of error, it is made to appear that the Court of Civil Appeals has erroneously declared the substantive law of the case." Are you ready for the question?

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The question being put, the amendment offered by Judge Brown was adopted by a viva voce vote.

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JUDGE JENKINS: Now, although it is in much better form, as I see it, than it was before, I do not believe it would be wise to adopt section six even in its amended form. Therefore, I renew my motion to strike out section six as amended.

JUDGE WILKINSON: I renew my second, Mr. Chairman.

MR. STUBBS (in the chair): You have heard the motion, duly seconded, that section six as amended be stricken out.

JUDGE JENKINS: I have no further argument to make except to refer to the argument of Judge Brown and Mr. Stewart, who have spoken to the bill. Each of these gentlemen said that the proper office of the Supreme Court, and its only proper office, was to keep in harmony the decisions of the intermediate courts, or the Courts of Civil Appeals—not that we want more appeals, and to go on to other courts, but we want it settled. If you strike out this clause, then you restrict the jurisdiction of the Supreme Court to that purpose for which these gentlemen have declared that it was created, and it seems to me that that is the measure of relief that will avoid at least these innumerable petitions for writs of error, and it will avoid the necessity of the Supreme Court's passing on these questions. As to the clause with reference to deciding cases where Courts of Civil Appeals have disagreed with themselves, that is embraced in another section of the bill, and not in this.

JUDGE BROWN: I want to be excused just for correcting Judge Jenkins in this: I am not stating, and have not stated, that to decide questions of dissent, or where there is a disagreement or conflict between these courts, is all that is necessary.

JUDGE JENKINS: I understood you to say that was the proper purpose, original purpose, of the Court.

JUDGE BROWN: When the Court of Civil Appeals decides erroneously a question of substantive law, if you have to wait for some other court to disagree with it before it comes to the Supreme Court, then you get into all this trouble, whereas under this clause you correct it at once, and there would be no further trouble on that question. That is the difference between Judge Jenkins and myself. I think we should decide these questions where the Court of Civil Appeals decides the substantive law improperly, and prevent a continuation of that improper decision, and not wait for some other court to follow it or disagree with it before we can act. That is the ground of my suggestion.

JUDGE SPEER: I hardly know, since the remark of the facetious member from Galveston, whether I ought to speak or not, but assuming I have a right to speak, I would like to speak to the motion before the Association. It has been said by our Chief Justice, for whom I have the very highest regard, and

with whom I have hesitated long to differ, that the Supreme Court of the state is very much in need of present relief. He but stated a fact which is known to every practicing lawyer and member of the Court, of course, in the State. We need not prate here about Constitutional amendments, for they are beyond our immediate reach. The people are very slow to give us Constitutional amendments, and whatever relief the Supreme Court gets in all probability must come through an act of the Legislature, for as I understand it, and as you understand it, the Legislature has the power to change the jurisdiction of the Supreme Court. It is exactly like saying that two and two make four to say that the only way to relieve the Supreme Court is to diminish and not to augment its jurisdiction. Now, there may be some possible room for contrariety of opinion as to whether this bill will increase or decrease the jurisdiction of the Supreme Court. In my humble judgment it will increase the jurisdiction of the Supreme Court. We all know that the jurisdiction of the Court of Civil Appeals is final now in a very large per cent of the cases. Under the proposed bill, the jurisdiction of the Court of Civil Appeals is final in no case. (Applause.) Listen to this clause, if you please, that I desire to make a predicate for the few remarks I shall make. The latter part of the article following section six reads—and it is very potent at this stage of the discussion: “The jurisdiction defined in this article shall constitute the whole of the appellate jurisdiction conferred on the Supreme Court, and shall exist without regard to the character of the action, or the amount or value of the matter in controversy, or whatever may be the character of the judgment rendered by the Court of Civil Appeals.” In other words, whereas the Supreme Court now has jurisdiction only of affirmed cases, it will, under the amendment, have jurisdiction over reversed cases, as well. The only limitation upon the Supreme Court will be the opinion of the Supreme Court as to whether substantive error has been committed. I want to ask this Bar Association, how can you advise your clients whether that Court has jurisdiction of any case. Jurisdiction is not a matter of legislative enactment, but it is a matter of opinion of the Supreme Court—a most dangerous rule by which to define jurisdiction. We lawyers know the difficulty we have had of

knowing what the courts were going to decide as to substantive law, but when it comes to the ability to get into a court at all—the matter of jurisdiction—the Legislature in defining that jurisdiction ought to speak in no uncertain terms, and the jurisdiction of any court ought not to be permitted to depend upon the opinion of that court. (Applause.) We would differ right here tonight on what is a substantial error. It has been asked by a member, What is substantive law? Of course, we all understand the dictionary definition of substantive law, but this clause leaves it at last to the Supreme Court to say whether or not it will take jurisdiction of a case, and on that ground I am in favor most heartily of striking out that clause, and I shall, therefore, vote to strike out section six—not upon the ground that the Supreme Court does not need relief, for it does need relief, and I shall be most heartily in favor of any bill that will afford relief, but merely upon the ground that, in my humble judgment, it will increase to an alarming extent the work of the Supreme Court.

MR. GLASS: If you strike out section six, then you might just as well strike down the Supreme Court, in my humble opinion. If a man has his home at stake in a lawsuit, and the substantive law is erroneously decided against him, it is very poor comfort to him to say that the Supreme Court will not correct that error and save him his home until some other Court of Civil Appeals decides differently.

MR. MORRISON: Then it is too late.

MR. GLASS: Then it is too late. The man's home is gone. I do not like section six. My objection to it is that I think the Legislature, when the Constitution creates a court, ought to define its jurisdiction, and it ought not to be left to the discretion of the court to take jurisdiction or not take jurisdiction of any case as it pleases, but I would much rather have it that way than to have its jurisdiction restricted altogether, so that there could be no jurisdiction taken. If you strike out clause six, and the Court of Civil Appeals erroneously decides the substantive law of the case, and a man loses his home, he has absolutely got no remedy whatever, unless some other Court of Civil Appeals will in the meantime come along and decide the



question differently, so that the Supreme Court will have a right to correct it.

JUDGE SPEER: Isn't that a very deplorable state of affairs that you refer to the law at present, where the value is less than \$1,000?

MR. GLASS: Yes, sir; it is, where it is less than \$1,000.

JUDGE JENKINS: What is the relief for that man if the Supreme Court decides it wrong?

MR. GLASS: I would rather take the opinion of the Supreme Court than the Court of Civil Appeals, with all due respect to them, and I know they are good men. That is the temper of the people, too. I know some of you may go up there to the Legislature with the proposition to practically abolish our Supreme Court, but they are not going to do it. To strike out section six, and deprive the Supreme Court of the right to grant a writ of error, where in its opinion there has been an erroneous decision, will practically strike out the Court, and, as Judge Brown says, the Court will simply be there to rust and do nothing, and I think it would be a bad step for this Association to go on record as favoring the abolition of the Supreme Court.

MR. FRANK C. JONES: There seems to be a considerable difference of opinion about this, and it is now about eleven o'clock, and I move that we take a recess until 9:30 in the morning, and sleep over it.

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The motion was seconded and unanimously adopted, and the Association stood adjourned pursuant to the motion.

#### JULY 3, 1912—MORNING SESSION.

THE PRESIDENT: The convention will come to order.

MR. SEARCY: The board of directors has an additional report recommending the election of certain members as stated.

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The Secretary read the following report of the board of directors, and it was moved and seconded that the report be

adopted, and the members named therein elected, and the Secretary instructed to cast the ballot of the Association for them, which was unanimously adopted.

GALVESTON, July 3, 1912.

*Hon. R. E. L. Saner, President Texas Bar Association:*

The Board of Directors beg leave to report that the following persons have applied for admission to membership in this Association, and the Board of Directors having duly considered the applicants and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in the Association.

Those recommended are as follows:

Ballinger Mills .....	Galveston.
R. W. Franklin .....	Houston.
I. S. Kampmann .....	San Antonio.
Robert N. Watkin .....	Dallas.
Mart H. Royston .....	Galveston.
J. T. Adams .....	Orange.
John A. Kirlicks .....	Houston.
D. E. Garrett .....	Houston.
H. L. Garrett .....	Galveston.
Chas. P. Macgill .....	Galveston.
B. J. Cunningham .....	Galveston.

Respectfully submitted,

W. W. SEARCY,

Chairman Board of Directors.

THE PRESIDENT: I suppose we had just as well take up the business this morning where it was left off last evening, and continue the discussion. I have forgotten who was on the floor at that time.

MR. GLASS: I do not think anybody had the floor. I do not want to inflict any punishment on this Association, but realizing it was late last night, I, in a very general way, expressed my opinion of the motion to strike out subdivision six of the article as amended. That is the matter before the house, and I wish to speak briefly further upon that question.

Now, this is not a reform of procedure that we have heard so much about in the papers. There is no popular demand, so far as the public has expressed itself, for diminishing or increasing the jurisdiction of the Supreme Court. The demand comes about because of the condition of the docket, and while I have not heard any of the judges say so, I take it for granted that if the Court was not so crowded and over-worked, and

overwhelmed with work, there would be no proposition coming from that Court to limit or decrease its jurisdiction. All that is demanded here, and all that is asked by the Court, and all, I think, that the people have any reason to expect, is that only that be done which is necessary for the immediate relief of the Court. Judge Brown tells us, and I know we are all willing to accept his statement of it, that the proposed bill, with section six as amended standing, will afford the necessary relief for the Court, and he tells you, too, that if you strike out that section altogether, without substituting anything in the place of it, that the Supreme Court will have nothing to do. Now, that is his general statement, and I am satisfied we are all willing to accept his statement as being true, but it only takes a moment to demonstrate the truth of it. If we strike out subdivision six, then we have the jurisdiction of the Supreme Court specifically defined, and what is that jurisdiction? First, that they have jurisdiction to grant writs of error to the Courts of Civil Appeals in cases where they disagree—that is, where there is a dissenting opinion—and, second, in cases where one Court of Civil Appeals rules contrary to another. Now, there are very few dissents, and there are very few cases that reach the Supreme Court of this state on account of dissents. The number is negligible. The second is, where one Court of Civil Appeals overrules the decision of another Court, or of the Supreme Court, and that does not amount to anything. I dare say that since the Courts of Civil Appeals have been established and in existence there has not averaged one case in twelve months in which the Supreme Court has granted a writ of error and assumed jurisdiction on the ground that one of the Courts of Civil Appeals has overruled the decision of another Court of Civil Appeals. It is the rarest occurrence. I dare say there are not ten lawyers in this audience this morning who have ever obtained a writ of error where the jurisdiction was based upon the ground that one Court of Civil Appeals had overruled another. The third is where the validity of a statute is involved, and that does not mean the construction of a statute, or meaning of a statute, but the validity of it, and there are very few of those cases. The fourth is where the revenue laws of the state are involved, and there are not many of those that go up

from the Courts of Civil Appeals to the Supreme Court. The fifth is where the Railroad Commission is a party to the suit, and that is very important, and I would not strike from the jurisdiction of the Supreme Court a single one of these cases, but do you know—my memory is not very long, but I can remember back at least two or three years—if we judge the future by the past the cases that will go from the Courts of Civil Appeals to the Supreme Court, where the Railroad Commission is a party, and either side could take it up, would be very few. There have been but two in the last two or three years.

JUDGE BROWN: I do not think we have had as many as a dozen cases in twenty years.

MR. GLASS: Did you hear the statement of Judge Brown? In twenty years it has not averaged one case a year—not a dozen cases in twenty years—and I believe it would be safe to say that two-thirds of a dozen would cover it. When you stop there, with those five grounds, what has the Supreme Court to do? Why, our Supreme Court reporter over there would lose his job, because he would not have anything to do. There would be no necessity for the Court, so far as work is concerned. Now, I hear gentlemen here talk about the Supreme Court being unnecessary, except to act as a kind of referee or floor manager. Well if it is unnecessary today it has been unnecessary for twenty years. In the last twenty years the greatest decisions that have ever been rendered by that Court, and of the greatest importance to the people, have been rendered. We have had just as able judges as the Courts of Civil Appeals from the time those Courts were first established as we have now. If it is not necessary to have a Supreme Court now it never has been necessary since the amendment to the Constitution. I want to say now that there is no lawyer in Texas who has a higher regard for or better opinion of the judges of the Courts of Civil Appeals than I have. They are able men. There are eight of those Courts in the state, all of coordinate jurisdiction, but I do believe that the Supreme Court is as necessary today as it ever was. It is as necessary today as it was twenty years ago, and all that is demanded now is that some immediate relief or temporary relief be given an overworked court. They are overworked. There can not

be any question about that, but when you undertake to strike down the jurisdiction of the Court with one fell swoop, you leave it practically nothing to do. If you strike out subdivision six, and do not substitute something in the place of it, they won't average two cases a month—three cases a month would be a most liberal estimate to make. I believe the Supreme Court is necessary. The Texas Bar Association has never been very successful in getting its recommendations adopted by the Legislature, and while I do not speak authoritatively about it, because I could not do it, and I do not pretend to, but I do not believe you will be successful when you go to the Legislature of this State with a proposition that emasculates the Supreme Court. It is the pride of the State of Texas. Wherever I go outside of the State, when I tell people I am a lawyer—because that is the only way they have of finding it out (laughter)—they say, "You have got a great Supreme Court over there. The decisions of the Supreme Court of Texas stand very high." I tell you there is no institution in this country that is as near and dear to the people of the State, and for which the common people of the state have greater love and reverence, than the Supreme Court of this State. I do not believe this Association ought to recommend to the Legislature, or ask the Legislature, to emasculate that Court and make it merely a floor manager or kind of referee. I do not believe it would be a success if you did ask it. Assuming that the judges of the Courts of Civil Appeals are as able as the judges of the Supreme Court—and I am not here to controvert that assumption—then if one of the Courts of Civil Appeals decides a case it might be that if that same case were put before another Court of Civil Appeals it would decide it differently. Then when will you get it straightened. When will you get a different decision? Why, it will be after the man that has suffered the defeat in the first case, and the law has been decided against him, has been stripped of his property, stripped of his rights. Maybe in the course of a few years some other Court of Civil Appeals will get a case that is like it, and they will decide differently, and then the Supreme Court passes on the question. If they hold the last decision was correct, and the first one was incorrect,

the man that has suffered the loss in the first case has no remedy whatever. I do not believe in delays. I think it is injurious to the lawyers and to litigants to have unnecessary delays in litigation. We ought not to have them, and we ought to settle litigation the quickest way it can be settled. I believe I agree with Judge Terry that the best way to do it, and I believe the quickest way to do it, considering the success this Association has had before the Legislature heretofore, would be by a Constitutional amendment. We can not get any relief until the next Legislature anyhow. Soon after that time I do believe we could get a Constitutional amendment adopted, increasing the membership of the Supreme Court along the alternative suggestion made by Judge Brown, dividing them into divisions, each independent of the other, except when they come together *in banc*. In my individual judgment, that is the quickest way to get relief. I do not believe that the Bar of this State, when they understand it, nor the people of this State, when they understand it, will stand for any proposition, or put through the Legislature any proposition, that simply emasculates the Supreme Court, and makes it no longer the court of the people, but simply a referee for the Courts of Civil Appeals, and a court for the Railroad Commission and the railroads that are involved in litigation with the Commission. If the great body and bulk of the people have no right to that Court, it won't be the court of the people any longer. When you take away its jurisdiction it will not be the court of the people. It has always been the court of the people, but it won't be any longer, if this amendment is adopted and nothing substituted in the place of it increasing the jurisdiction of the Court. (Applause.)

JUDGE WILKINSON: Of course, it is recognized that every man has a right to his day in court. It does not follow from that that he has a right to have his day in two courts, or three courts, or five courts. The only reason why he should have a right to resort to more than one court lies in the fact that the trial court, acting under the press of business, and compelled to rule offhand upon questions which it has not had time to give due deliberation to, needs the correction of a revisory court, which can review at leisure its decisions, and announce the principles of law governing the case for the guidance of litiga-

tion and courts in the future. That is the necessity for one Appellate Court. For a great many years in this State we had only one Appellate Court. There was no power that could review its decisions, and except for the fact that the business of the State increased to such an extent that it was impossible for that Court to keep up with its business, nobody would have dreamed of making it a reproach to our law that a man had a right to try his case in only one Appellate Court. We were satisfied with that. It worked well and it worked satisfactorily, as long as that Court could keep up with the business. Judge Glass said yesterday that a man ought not to have his farm taken away from him unless the decision of the Appellate Court could be reviewed by another Appellate Court, but we take away his life from him in just that way. There is no power that can review the decisions of the Court of Criminal Appeals. We have got only one Appellate Court there, and we do not conceive that there is any necessity for another court to review that Appellate Court. As far as the respective merits of the Courts of Civil Appeals and the Court of Criminal Appeals are concerned, I do not know but what the former meets the approval of the profession—but then, there are members of both Courts here, and “comparisons are odorous,” as Mrs. Malaprop says. But we are getting along in our administration of the criminal law with only one Appellate Court having the power to review any decision, and we got along for a great many years with only one Appellate Court having the power to review any decision of the trial court, civil or criminal. The trouble is, as Judge Brown says, that we are human beings, and we are fallible, and we are liable to make mistakes. That is inherent in the very administration of justice, from the ground up, and I suppose as long as we have courts, the trial court will continue occasionally to commit errors, and the Appellate Courts somewhat more rarely will continue to perpetuate those errors, and if we have Appellate Courts reviewed by the Supreme Court, that will, very rarely, but sometimes, commit errors in reviewing them, and if there was another Supreme Court—a maintop, royal, gallant court—to sit over the Supreme Court, that would in turn make errors, as the Supreme Court of the United States makes them. We can not get a perfect administration of the law. But

why, after a man has had his day in the trial court, with every security which the law can place about him for a fair trial, with a hearing before a trained lawyer and judge to secure his rights there, and then has had that reviewed upon appeal by an Appellate Court of trained lawyers, he should have another day in court, to have that reviewed by another court, is something that I can not understand. What is the necessity, then, for a Supreme Court? There is a very obvious one. We have a number of Courts of Civil Appeals, of concurrent jurisdiction. Being human, they take different views of the law. One Court will say that a certain principle of law is sound and must be enforced, and another one will differ from it and decide to the contrary. If we do not have some power to keep those decisions in harmony by a revisory court, that shall sit over all these Appellate Courts, we will have our system of law in utter confusion. So we have to have a Supreme Court in order to preserve the harmony of our system of law. I do not understand why any litigant has a right to have his case a second time reviewed by an Appellate Court, or why there should be any justification for it, or why the rulings of the Appellate Court should not be final, except in cases of conflict that threaten the destruction of our system of law, just as they are final now in a great mass of the cases that come before them—final on questions of fact, final on questions involving only certain amounts, final on questions of certain character? Then why not final upon all, except where the necessity of preserving the harmony of our system of law demands otherwise? Now, I rise to speak on this question with a great deal of diffidence. I know the Supreme Court has had this matter very closely at heart, and that relief for them is imperatively demanded, and they have given this thing careful consideration, and that they have got in this section six the best system which they can devise. But they admit that section six is unsatisfactory, even as amended. Everybody admits it is unsatisfactory. It is very doubtful whether in the form in which it is now presented, or in any form involving the substance of the jurisdiction which that confers, it can ever be gotten through the Legislature, and it will be very unsatisfactory if it does get through there. Judge Brown says we would leave the Court



to do nothing but rust. I do not suppose it would be contemplated that this law would do away with the jurisdiction that has already attached to cases that are now pending before the Court, and Judge Brown says they have cases enough now before them to occupy them for two years, and by the time this law could be passed they would have a batch more of writs of error granted, which would give them another year's work, if they never had jurisdiction of a single case under the provisions of this contemplated act. They will have three years' work before them anyhow, and surely there will be another year's work accumulate in that time, and I think the danger of the Supreme Court's rusting is something that we may postpone for four years, at least. By that time our whole system of appellate procedure may be shaken up and done over again. In fact, I think it ought to be. I do not understand that it is contemplated that this act interferes with the power of the Courts of Civil Appeals to certify questions. That jurisdiction of the Supreme Court is given, not in the section which it is sought to amend here, but in the law regulating the organization of the Courts of Civil Appeals. If there are any considerable number of cases in which a review of the decisions is necessary, on account of the novelty or gravity, or difficulty of the principles involved, I do not see why the question of determining what cases should take that course might not be as well committed to the Courts of Civil Appeals as to the Supreme Court, and they will have that jurisdiction by certifying the question—not certifying the whole case, of which Judge Brown complains.

MR. GLASS: In the bill as drawn a subsequent section provides that the jurisdiction therein conferred shall be the only jurisdiction that shall exist. It takes away the right to certify.

JUDGE WILKINSON: Then I think it ought to be amended so as to leave the law in regard to certifying questions as it now stands. I had overlooked that section, and Judge Brown, when I asked him the question, said it was not proposed to interfere with the jurisdiction in regard to certifying questions. But that jurisdiction, I think, ought to be left in the courts, and the power of the Court of Civil Appeals to certify questions ought to remain undisturbed. I do not share the apprehensions of Judge Brown or Judge Glass that under such a system the

Supreme Court will be left without anything to do. I think it has some three or four years of accumulated business before it anyway, and if the change should be so sweeping as the gentlemen seem to think it is, it certainly is not sweeping enough to leave the Supreme Court without anything to do, or to relieve the pressure of business upon them, for some years to come. Something even more radical than this would have to be done to accomplish that. I believe myself that with section six struck out the Supreme Court would have as much business as it could attend to with due deliberation and opportunity to give fair and full examination to every question presented to it, and enough to occupy its time. It would have the jurisdiction necessary to preserve the harmony of our system of laws, in every essential respect, and I see no reason why it should be called upon to exercise any other jurisdiction. It is enough, if we settle the conflicts between our own Courts. If those Courts pronounce decisions that are not in harmony with the law elsewhere, I think it may be left safely to the future conflicts which will arise, when other Courts of Civil Appeals are not satisfied with those decisions pronounced and render contrary ones. At any rate, the proposed change and amendment here leave the Supreme Court with every jurisdiction that I think a Supreme Court should be called upon properly to exercise, and that is the preservation of the harmony of our system of laws. As far as the Courts of Civil Appeals are concerned, I think myself they are pretty respectable Courts as they now stand, and if you make this change you give more dignity to those Courts, for they are Courts of last resort, and if the people are not satisfied with the personnel of those courts they are going to exercise the same care they have as to the Supreme Court, and get men who will do the work satisfactorily. I think we have got very good Courts of Civil Appeals as they now stand, and I do not anticipate that the reporter of the Courts is ever going to get out of a job, even if this jurisdiction is taken away from the Supreme Court.

MR. W. E. HAWKINS: Mr. President and members of the Association, I had not intended to burden you with any remarks on the pending motion, but I am compelled to do so by reason of the remarks of Judge Glass, expressing his apprehension that if

section six be eliminated from the proposed bill the Supreme Court will find its occupation practically gone. He couples that with the suggestion that that condition will ensue unless something be substituted in place of section six, and that brings up the point which I want to present to your minds. I had prepared a motion, and Brother Gaines of Matagorda County and I had prepared another, which were to have been introduced at the proper time—not now. Under the rule of order it would be appropriate to offer them and to discuss them after the pending motion to substitute section six had been disposed of, and yet the discussion has developed an idea in the minds of some that if section six be eliminated, and nothing be substituted for it, the Court will have very little to do, and that, therefore, it would be a mistake to eliminate section six. Now, I am not offering these motions now, because there is a motion to substitute before the house, but in view of the suggestion of Judge Glass I want to read them, so as to suggest to your minds the very points which I think ought to be developed by way of addition to the pending bill, or to the proposed bill, so that in voting upon this motion to eliminate section six you will have before you the thought which is involved in these motions, which, with your indulgence, I will offer at the proper time. The first is this, and if you have the bill before you, or a copy of the last minutes, I would be glad for you to follow this with me, and it will aid me and aid you: “To strike out all of section three except its number, and in lieu thereof insert the following: ‘Those involving the construction or application of the Constitution of the United States, or of the Constitution of this State, or of an act of Congress, and those involving the validity of a statute.’ Signed, William E. Hawkins and John W. Gaines.”

MR. GLASS: Pardon me, but what would you think about adding, “the validity or construction of a statute?”

MR. HAWKINS: Well, it may be that ought to be added. The substance of this amendment is embodied in the original bill which was presented for the consideration of this Association at Waco last year. You will find it printed on page 1 of this pamphlet, and it reads, “Those where the construction and application of the Constitution of the United States, or of the

State of Texas, or an act of Congress, is involved." The third following it, which is combined in our amendment is, "Those where the validity of the statute of a State is involved." So this proposed motion merely combines sections two and three of the bill that was originally proposed and presented from the members of the Supreme Court to the Bar Association, or to the Senate. Perhaps I may be mistaken as to the authorship. Anyway, it was the bill that was presented to the Senate under the resolution which was adopted at Waco last year. Is that not correct?

JUDGE SPEER: No. That bill was presented by myself. The bill that was presented to the Senate is the one that is presented now, and was proposed by Judge Williams.

MR. HAWKINS: Anyway, I want to give credit where credit is due. Now, on the merits of this proposition, I believe that the Supreme Court ought to have final jurisdiction in all classes of cases coming in these categories—involving the Constitution of the United States, the Constitution of Texas, acts of Congress, and the validity, and perhaps the construction of statutes of this State. I may be wrong about that, but I have not seen any lawyer who would question it, and I am a little surprised that it is omitted from this bill. I state these things tentatively, and not dogmatically. If any lawyer upon this floor is able to point out why these things shall not be included within the jurisdiction of the Supreme Court of this State, I should be glad to hear from him as a matter of information for me and this body. My second amendment is in line with the first, and it is to this effect: Amend section five by inserting the words, "the State, or head of a department," making said section read: "5. Those in which the State, or head of a department, or the Railroad Commission is a party." The section now reads, "Those in which the Railroad Commission is a party." The effect of this amendment would be to add cases in which the State is a party, and cases in which the head of a department is a party. These ideas are also taken from the bill which I now understand was drafted by Judge Speer, shown on page 1 of the pamphlet. As to that I beg to say this: Having for a long time had some close experience with those matters, I am profoundly convinced that the Supreme Court of this State ought to have final jurisdic-

tion where the State is a party, and when the heads of departments are parties, because they are in practical effect, if not in legal effect, suits in which the State is a party. With reluctance I dissent from the view presented by our distinguished Chief Justice. I believe the Supreme Court ought still to have jurisdiction of cases involving mandamus against the heads of departments. I realize some of the difficulties which that Court has encountered. I know the vast extent of that litigation. But, gentlemen, upon the other hand, I know the vast importance of that litigation, and in my judgment it overshadows all other considerations involving time and labor on the part of that Court. The remedy for the relief of the Supreme Court is not at that point. Do not remove the jurisdiction of the Supreme Court in dealing with affairs involving the business of your State government, involving the action of heads of State departments, Constitutional officers of this State, clothed with broad discretion, which has been upheld by the decisions of the Court in numerous cases, a discretion which the Constitution makers recognized, where they left that power in the Supreme Court, to be carried into effect under acts of the Legislature. It is true it did not absolutely tie up their powers, as I remember the Constitution, and as I read it hurriedly, but they did leave it in a flexible way, so that the Legislature could clothe that Court with that jurisdiction, and it has seen fit to do it. I do not know how many cases there have been, but, gentlemen, I want to tell you that I can point you to many mandamus cases, involving many thousands of dollars, and grave and important rules of law concerning the operations of your State government. Judge Brown will bear me witness that in many of those cases great issues affecting the administration, sale, lease and disposition of public school land have been involved, and that many of those decisions have been of the greatest importance, and it is not necessary for me to specify to a crowd of lawyers like this the many mandamus cases involving the other heads of departments, where grave issues were involved. My belief is that in all those matters the people of the entire State are interested, not only in a general way, as they are in rules of law affecting minor questions, but in their collective political capacity, and that those questions ought not to be left in any uncertainty,

which is necessarily involved in the decisions of the Courts of Civil Appeals upon them. Suppose that mandamus jurisdiction were vested exclusively in the Courts of Civil Appeals, or, as Judge Brown suggests, in the District Courts, and a District Court, or even the Court of Civil Appeals, say at Austin, would hold a certain way, construing a certain Constitutional provision or a certain statute, affecting the duties of a head of an executive department. After awhile another judge upon the district bench, or the Court of Civil Appeals at Galveston, say, might hold directly to the contrary. Meanwhile the point would have been considered settled in a way, and rules would have grown up under it, property rights would have been acquired under it, and all that, and yet it would be subject to final overturning by the Supreme Court, when that Court acquired jurisdiction under this other provision of your bill, giving that Court jurisdiction where this is a conflict between the opinions of the Courts of Civil Appeals. I do not wish to take up any more of your time upon this proposition. I meant merely to outline it, so that you might have it in mind in considering the pending motion to substitute.

MR. H. G. ROBERTSON: I want to call your attention to the fact that your acceptance of Judge Glass' amendment changes very greatly the meaning of your amendment. A great deal of litigation in Texas involves the construction of statutes, and very little the validity of statutes.

MR. HAWKINS: Yet I think that will greatly lessen the danger, and I think perhaps it ought to be in. I believe these powers of the Supreme Court ought to be placed there in a clear, intelligent and emphatic style, so that there can be no question, and if it is intended that the Court should have that power, I see no objection to placing it there in unmistakable terms.

MR. ESTES: As I understand the object of the bill that has been presented by Judge Brown, it primarily is to relieve the congested condition of the Supreme Court. There is no congested condition of the Court of Civil Appeals, and there is no effort made in that bill, as I understand it, to change the method and form of our procedure in all matters of appeal. I understood the observation of Judge Jenkins to be that the

bill suggested by Judge Brown, instead of relieving the congested condition of the Supreme Court, by reason of enlarging the jurisdiction, would only make matters worse. Judge Brown tells us that his experience is that the Supreme Court is relieved of matters of detail, and if permitted to pass only upon questions involving the substantive law of the State, this congested condition will be relieved. The question before us, as I understand it, is to recommend to the Legislature some bill or some method, not for radically changing our system of jurisprudence, not a question of whether we will have one or two appeals, not a question of whether the Supreme Court ought to be emasculated, but some method by which this congested condition of the Supreme Court docket may be relieved. I think Judge Brown's experience is such that his recommendations are of sufficient weight to call upon this Convention to give them at least a test. If it involves any change, it involves a change, it seems to me, for the better, in that it gives that Court jurisdiction to determine all cases, regardless of amount, where the substantive law of the State is involved. That, it seems to me, would be a good change, and if the Supreme Court is able to attend to the business it is a change that would bring to the common people of this State the benefit of whatever value attaches to the opinion of the Supreme Court. In other words, it gives to every litigant, where the substantive law of the State is involved, the right to the judgment of the Supreme Court on those matters. As I say, it is not a question of whether our procedure shall be changed or not. If you do away with our Supreme Court you do away with the symmetry of our whole system. It was never contemplated that we should have the eight Courts of Civil Appeals you have created and constituted in this State, and at the same time there not be a Supreme Court in connection with it. The Supreme Court is a part of the system. It is a part of the symmetry of the whole arrangement, and unless there is some Court of last resort, whose duty it is to finally and authoritatively settle what the substantive law of this State is, it seems to me that in the eight Courts of Civil Appeals, however much we may respect them, there would be more or less confusion with regard to property rights and as to just what the law of this State is.

MR. MCKAMY: Gentlemen of the Association, I shall not detain you long, and I shall not speak to you from the standpoint of an attorney so much as from the standpoint of a taxpayer and a man who has had some experience in Legislative matters. I sat here last night and enjoyed the discussion upon this question, and I saw you in your arguments march up hill and then march down again. I recognize the fact that the legal mind is the most technical mind there is. No man is trained to think and to ferret out details like the man with the legal mind, and hence it becomes almost impossible for a band of lawyers to agree upon the main issue, because there come up so many intermediate things. But now, in speaking to you from the standpoint of a taxpayer and a citizen, I tell you that the country is not so much concerned about these things as they are about results. One reason of the crowded condition of your courts is that you are reversing cases upon points that do not go to the merits of the case. You are reversing cases upon questions of how you get up to a court, that in my opinion as a layman, have really nothing to do with the merits of the case, and absolutely ought not to be permitted to reverse a case. In these remarks I have reference both to criminal matters as well as to civil matters, and I want to tell you that the people of the country are absolutely tired of the court's delays. The business man shuns the courthouse just like he shuns the pesthouse. He does not understand why he must be called away from his business and waste six or seven weeks in the trial of a case that ought to be tried in three days. He does not understand that a case ought to go up to the Court of Appeals six or seven times and be sent back for a new trial on questions that never reach the merits of the case at all, and it is absolute nonsense. What you want is simplicity in your procedure. You have got no business reversing a case upon any question that does not go to the merits of it. (Applause.) The man that has property involved has no patience with your quibbling about the manner in which you get up to the court. I am speaking now as a man who has been called upon to sit in the jury box and to act upon your grand juries, and I had the pleasure of being a member of the Dallas Bar for some twelve years. I was called home to take care of an old father and



mother, and since then I have been acting as a layman, and I feel that I know the sentiment and feeling of these people possibly better than you do, some of you. I love the profession as well as any man, and when I drift into a town away from home I just as naturally drift to the courthouse for pleasant associations and companions as water runs down hill to seek its level. But that is not what the layman is talking about. He wants simplicity in your court procedure, and when a case goes up he wants the merits of the case reached before it is reversed, and he is not going to listen to much else, and he is not going to listen to it very long. I heard the argument read by Judge Franklin yesterday morning, to most of which, to a legal mind and a thinking mind, there is no answer, but when the people have suffered long and have been patient and kind with this profession, there comes a time when they will stand it no longer, and the legal profession must do something, or get exactly what they do not want. Now, bear in mind that when the people take hold of this they will work it out themselves, and think of the delay, and the trouble and expense it is going to be to the taxpaying interests of this country. Now, you know this State is paying to these courts more than a million dollars a year. It ought not to cost that much, and if it was not for the fact that so much of the work has to be done over it would not cost more than half that much. Think of a business man employing men whose work had to be done over three, four, five, six, and sometimes seven times. He would not keep that man in his employ thirty minutes. Do you expect him to put up with a condition in his court affairs that he won't put up with in his own affairs? He won't do it always. Now, I am calling your attention to this because it is a matter that I have had very close to my heart for some ten or twelve years. When I was a member of the Twenty-Sixth Legislature with Dudley Wooten, we spent about three months at home and at Austin, and we have elaborated a Code, in the light, as we conceived, of the decisions. We introduced the bill, and it covered this whole field of the trial, procedure, and all that kind of thing. It went to the judiciary committee, and they began to cut and slash it from the very minute it got in there, and in the course of a week it was not worth the paper it was

written on. Now, let us talk about the Legislative end of it, because I have served my people down there four years in the House and four years in the Senate, and am somewhat familiar with the proceedings down there—possibly not so much as my friend, the Chief Justice of the Supreme Court, because he has served longer than I have. The average lawyer that goes to the Legislature wants to be on the judicial committee, 1 or 2, whether he has any object in view or not. So he goes and asks the Lieutenant Governor or Speaker of the House to put him on there, and without any knowledge, or caring whether he is a suitable man for that or not, or whether his ideas are in line with the progressive thought of the people or not, he goes on that committee, and I am sorry to say, and yet I say unhesitatingly, because I am going to shame the devil to tell the truth, I have seen men sit on those committees and fix bills to try cases by when they got back home. I have seen others providing for technical errors, in bills prepared to fit cases that were already up in the courts to be tried when they got back home, and I make no bones of telling that, because they admit it. Now, that ought not to be the case, and yet it is true. We require of our judges when they go on the Bench that they have no entanglements, that they have no environments to keep them from doing their whole duty. They are not representing anybody or any class. They go up there on the Bench and sit there absolutely as impartial jurors to try the cases and to pass upon the merits of them. Why shouldn't we require the same conditions of the man who sits in your Legislative halls to make your laws for you? What good legislation can you expect of a man who is on the payroll of a railroad, or of a liquor dealers' association? What good legislation can you expect of a man of that kind, and yet a member of the Legislature will be called upon by some organization to pledge himself to vote against twenty or thirty bills before he goes there. That is not the idea of the people among whom I live. The farmers have sent out to the members of the Legislature all over the country a request asking them not to pledge themselves to anybody or any measure, and not to vote for or against any measure, but to hold themselves in reserve until they have heard a thorough discussion of both sides of the case. That strikes

me with wonderful force. Now, when you get up to the Legislature there are two ways of doing this thing. In the first place, I had hoped that when this Bar Association met you would agree upon a bill regulating the practice in the Supreme Court, and another bill regulating the practice in your Courts of Appeals, and another bill regulating the practice in your Criminal Courts, that might be endorsed by this Bar Association, and that we might then go up to the State Convention and have those bills made platform demands. The average man who goes to the Legislature has no love for this Bar Association like we have, has no love for anybody, possibly, except the men he represents. He does not care for anything unless it is a platform demand, unless it meets his individual views. That is one way—to prepare these bills and submit them to the State Convention and have them put in your platform—identical bills—not theories. The other way is to appoint your committee like you speak of, prepare your bills, and let a man run for Governor on those bills and be elected, together with a House and Senate, before you can pass them. You remember how you got the Commission bill through. They had a bill introduced that passed the House and failed to pass the Senate on Constitutional grounds. It was then taken up by Governor Hogg, and the State was campaigned upon that very Commission bill, and a Legislature, both House and Senate, was elected upon that identical idea, and if my recollection serves me right, our worthy Chief Justice here passed that bill through the Legislature without an amendment, and it is about the only way you can get it through unless it is a platform demand. Now, these are simply my ideas in brief about how these things ought to be done. I am here, as I say, not as a practicing lawyer, because I have no cases in the upper Courts, and have no interest except as a citizen. Another thing I want to call your attention to is what our Chief Justice said, that when a man files a case in Court—it doesn't make any difference which Court—he is headed for the Court of Appeals, the Supreme Court, and, if possible, to the Supreme Court of the United States. He is going just the limit. Now, let us see what the effect of that is. I have sat in the jury box, in the trial of some corporation cases, and it would appear, possibly, that the plaintiff was en-

titled to \$5,000, but some man on the jury says, "Well, they will go to the Court of Appeals with it. They will go to the intermediate courts and they will go to the Supreme Court, and then likely they will go to the Supreme Court of the United States with it. Let us give him a verdict for \$25,000." I saw a statement not long ago, last year, I think it was, that one of the railroads—my recollection is it was the Katy railroad—had something like \$230,000 or \$240,000 of damage suits rendered against it alone. Many of those cases were \$25,000 verdicts, when, if the juries had known that the first Court would be an end of it and the men would have been settled with, the verdict would not have been but \$5,000. You have got to reason about these things. These men out yonder in the jury box, the men out yonder between the plow handles, are not theorizing at all. They are looking for conditions, and they want them right away. They are not going to wait always about it. Now, what I would like to see this Bar Association do is to sit down here and agree on about three or four bills, and make them as simple as possible. Your verbiage, and your wordage, and your confusion, that you do not understand and do not agree upon yourselves, is the trouble of the crowded condition of your courts. Your reversal of cases upon points that never pretended to reach the case is largely the trouble in your criminal courts. You take a case that goes up six or seven times, and there are six or seven times as much expense, six or seven times as much labor, six or seven times as much delay, and six or seven times as many mobs as there ought to be in this country. These are serious questions for us to think about, my friends, and I give them to you not probably in the way you usually get them, but I give them to you as one of the men who have been down yonder among the people who are complaining. That is the truth about it. Everybody recognizes that the Bar Association and the lawyers are the men who know how to do it. They have been leaders in civilization always. They are one of the great professions, one of the greatest, and yet I am frank to say that they have not kept pace with the advance of civilization. They have not done it in their practice. They have become worshippers of precedent, absolutely worshippers of precedent. Why, away back yonder, when the old Alcalde sat on the bench he did

not care anything about what another court had said, what some other judge said. When a question came up before him involving a legal question he gave it to you just straight, like it never had been settled before.

JUDGE BROWN: You are mistaken about that. There was no man that stuck closer to the authorities than Governor Roberts.

MR. MCKAMY: Well, I stand corrected, Judge, but I was under the tutelage of the old fellow a number of years, and never heard him quote from anybody in my life except John Marshall. John Marshall was the only man that he thought knew more about it than he did, but I stand corrected. I would not take issue with Judge Brown on anything.

JUDGE BROWN: I corrected you because you made a mistake.

MR. MCKAMY: That is all right, and I stand corrected. But I am telling you the trend of public opinion, and I would like to see this Bar Association do something to meet it. Everybody recognizes that there are men here who know how to do it. The question now is, Will they do it? Will they take time by the forelock, simplify their Code, simplify their Procedure. The passage of a simple bill of twenty lines would relieve the Court of Criminal Appeals of two-thirds of its cases. I have not the slightest doubt about that. Whenever you tell the Court of Criminal Appeals that they can not reverse a case except on a question that goes to the merits of the case, where the court was satisfied that because of the admission of evidence, or otherwise, any of the rights of the parties had been injured, then you will take away two-thirds of the cases that are appealed to the Court of Criminal Appeals. I thoroughly agree with what Judge Wilkinson said. You want these intermediate courts, but you want their decisions on most cases to be final when they pass on them, and you want your Supreme Court over here to finish out, as a capstone of our beautiful judicial system. But the main thing you want to do is to get to work and simplify these matters. You are the men who know how to do it, and if you don't do it the other fellow is going to, and it will take a long time, and a whole lot of trouble, but he is going to work it out. But I would like to see the Bar Association take hold of it, and do it now. The people expect it, and I hope you will. (Applause.)

THE PRESIDENT: Gentlemen of the Bar Association, the time has arrived for our regular order to be resumed, and I will ask Mr. Biggs to come forward. (Applause.) Gentlemen, I have the pleasure of introducing to you Hon. Albert W. Biggs, of the Tennessee Bar, who will address us at this time upon a subject of vast importance to the lawyers throughout the country. (Applause.)

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The address of Mr. Biggs is published in full in the Appendix.

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MR. ESTES: I move that the thanks of this Association be extended to Mr. Biggs for his interesting and instructive address.

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The motion was duly seconded and unanimously adopted.

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MR. BURGESS: I move that Mr. Biggs be elected an honorary member of the Texas Bar Association.

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The motion was duly seconded and unanimously adopted.

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THE PRESIDENT: I would suggest that we have a long program and many things to come before us.

MR. FRANK C. JONES: Is it your intention to go on now with the discussion?

THE PRESIDENT: We will resume the discussion.

MR. JONES: Mr. President, I desire to say just one word. I have listened, gentlemen of the Association, to this discussion of the bill offered by our Chief Justice Brown with great interest, but it seems to me, the committee having brought in a report on only one court, our Supreme Court, and having recommended that a committee of five, as I understand it, be appointed to handle this whole matter, that we should not take action at this time, either adopting this proposed bill or rejecting it, for the reason that when your committee meets and proposes to draft a bill changing the jurisdiction of the Courts of Civil Appeals, for instance, or the District Court, perhaps some section of this bill must then be changed. Perhaps that committee will unanimously decide that section six should remain in the bill, or per-

chance, the committee might decide, in view of the fact that they have relieved the situation otherwise, that other and additional sections should be added to the bill. I, therefore, move you that this bill be referred to that committee, when appointed, and that the committee then, with this bill before it, propose such legislation as they may deem advisable. Had the committee presented bills to this Association for approval relating to the District Court, the Court of Civil Appeals, as well as the Supreme Court, we could all act intelligently. Now, I have great regard for the opinion of our Chief Justice, and he thinks section six as amended should remain in the bill. Many eminent members of this Association differ with him. They think that the jurisdiction of the Supreme Court should not be so enlarged. How can we know what effect the adoption or endorsement of this bill now will have on the action of your committee, to whom you have delegated this whole subject, when they met? How do you know, if we today fix the exact size of the capstone of this structure, that it will fit the arch, or whether this law as to the Supreme Court will be too broad, or too narrow, or exactly fitting into the whole structure, when that committee's labors have been completed. I, therefore, move that we take no action on this bill now, because it might embarrass your committee. It is not right to your committee. It is not just to our Chief Justice, nor to the gentlemen opposing him. All of our views can be presented to that committee, in connection with other matters before it. I, therefore, move that this whole matter be referred to the committee to be appointed, together with the other bills which they are to draft, affecting the District Court and Court of Civil Appeals, as well as the Supreme Court.

MR. SEARCY: As a member of the committee that was appointed to consider the matter under discussion, I do not think the gentleman from Houston entirely understands the recommendation made by the committee with reference to the appointment of a commission composed of five lawyers, to take into consideration and prepare the necessary amendments to the Procedure, from the District Court on up. Our purpose, as I understood from the committee, was not that the Bar Association was to appoint this commission at all, but that we were to recommend that a law be passed authorizing the Governor to appoint such a

commission, who should be paid adequate salaries, in order that they might take the work in hand and do it properly, and that the action of the Bar Association would simply be carried to the Democratic Convention, and that the matter might be embodied in the platform that was to be adopted there, that it might receive the necessary attention at the hands of the coming Legislature. Therefore, simply to relegate this matter to a committee to be hereafter appointed by this Association would leave us exactly in the fix we were when the committee was appointed by the chair at Waco. It is very evident that—at least, it is very evident to my mind—unless we get something before the convention, and get it into the Democratic platform, we are going to get no relief at the hands of the Legislature at all. One of the greatest troubles that the Bar Association has had in the past in passing resolutions and recommendations to be carried to the Legislature is that we have not followed the matter up. In other words, we have not stayed on the job. There is no other organization in the State that asks the Legislature for remedial relief but what has its committees to go to the Legislature. They defray the expenses of the committees and keep them there before the Legislature until relief is had, or until rejected, and until we pursue some similar course we are going to meet at the hands of the Legislature the same treatment we have in the past. So far as the sixth section of the bill as recommended by the committee is concerned, while we all agreed that it should be submitted to the Bar Association in the language in which it was submitted, having been drawn by Judge Williams, a former member of the Supreme Court, we did not all agree that we would support that portion of it before the Association. Now, Mr. Chairman, it occurs to me that we are belittling too much our Courts of Civil Appeals. I think that as long as we continue to let it go out before the people of Texas that it is absolutely necessary to have a Supreme Court to review the decisions of the Courts of Civil Appeals, we are creating within the minds of the people of Texas the thought that the lawyers themselves do not believe we have competent judges, that are properly deciding the law, upon the Courts of Civil Appeals. Now, for one, my experience has been that in the Courts of Civil Appeals we get about as good results as we



do in the Supreme Court. We all take the privilege of "cussing" whichever Court decides against us (laughter), and it don't make any difference whether it is the Court of Civil Appeals or the Supreme Court. The lawyer who gets into his case feels that he is right, and when he loses out he feels like the fellow who decided against him did not know any law. I believe altogether with Judge Wilkinson in his idea about a man being entitled to more than one appeal. I think every fellow ought to have one appeal, and when he has had one he has got all that is coming to him. Now, they talk about the purpose of the Supreme Court being to keep these courts in line, and they talk about the substantive law. Now, as long as the Courts of Civil Appeals agree as to what the substantive law of the State is, or as to that particular case, then what is the use of the Supreme Court? There is no need of the Supreme Court, if they are together. If the Supreme Court differs with them that would merely burden them with all the labors that Judge Brown complains of now, it seems to me, instead of getting relief. Now, I do not believe in giving people too much arbitrary power, whether it be the Supreme Court or anybody else. When you tell me you are going to broaden the jurisdiction, take away every limitation that the law now places upon appeals from these lower Courts, and say that you place it within the hands of the Supreme Court to say whether or not you are entitled to have that Court pass upon your case, to say whether or not any injustice has been done you or not, or any substantive law has been violated, I say that I am not willing to do it. I want to be able, when I attempt to appeal a case to the Supreme Court or the Court of Civil Appeals, to know that the law says that I am entitled at least to have a hearing before them, and not have them say to me that my petition does not present matters that they care to consider. If they want to refuse a fellow's writ of error, all right. Now, I believe that Judge Townes has some amendments—he is also a member of that committee—that he desires to suggest along a line that will give the Supreme Court all the work they want, at least until they get up with the two years that they admit they are behind in the cases that are now before them.

JUDGE JENKINS: Mr. Chairman: To my mind, if it is our purpose to kill the work of the committee we can succeed by adoption of this motion to refer to a committee. This question came up at Waco, and we got just to this point, and the whole thing was killed by referring it to a committee. That committee has reported, and we have their report, and let's act on it one way or the other.

JUDGE SPEER: May I say just one word on this question? I know figures are not usually very interesting, but in this morning's News there are some figures submitted by our Chief Justice that will throw a great deal of light on the question before us. The real question before us is whether or not the retention of section six in this article will increase or decrease the labors of the Supreme Court. I call your attention to these figures. To summarize, the Chief Justice reports through this article that there were 509 applications for writs of error acted on at the last session of the Supreme Court. Out of these 509 there were 345 applications refused and 104 granted. I call your attention to the fact that one in four of the applications for writs of error has been granted during the past year by our Supreme Court. Now, if this clause six is retained, then the Supreme Court will have the jurisdiction to grant a writ of error, if it wants to, in every case appealed to the Courts of Civil Appeals, over many of which it now has no jurisdiction. The eight Courts of Civil Appeals in Texas are annually disposing of 2000 cases, in round numbers. The Supreme Court will then have jurisdiction over those 2000 cases. If it continues to grant at the rate of one out of four applications, it will during the nine months of each year grant 500 applications. In other words, each year it will grant enough applications that it will take five years to write the opinions. They have written 83 opinions during the last year. Now, there is an absolute demonstration of the fact that if they continue to grant them at the rate they have granted them during the last year, they will grant enough applications in one year's time to give the Supreme Court work for four or five years in writing opinions. It occurs to me, to borrow the language of our Supreme Court, that reasonable minds could not differ upon matters of that sort, that to give

them jurisdiction over all cases appealed to the Courts of Civil Appeals will augment the jurisdiction and the labor, rather than to decrease it.

MR. ESTES: I understood Judge Brown to say that if this change he suggested is adopted they would not have to grant writs of error where they grant them now, but that the only matters about which they would be concerned would be some matters involving the substantive law of the State, and, therefore, while they might look over the records, in a way, their labors would be greatly lessened, and the number of writs of error they would grant would be decreased. Therefore, the percentage you state would not obtain under the new law.

JUDGE SPEER: What reason have you for saying the percentage would not be as great?

MR. ESTES: Largely because he says that is the case, and he is basing it on his experience.

JUDGE SPEER: You may rest assured that when a lawyer has lost his case in the Court of Civil Appeals, if he has a right to appeal to the Supreme Court he will do it. I would do it, you would do it, and every one of our members would do the same thing. The Supreme Court then will necessarily be called upon to pass upon 2000 applications for writs of error. That is a great many more applications than they pass on now, five times as many, in round numbers. They can only write 80 to 100 opinions, in doing this work, and their work will necessarily be increased. It seems to me that all Texas will laugh at us, gentlemen, if we say to the world that we are endeavoring to lessen the labors of the Supreme Court, and at the same time we are taking off all restrictions and giving them jurisdiction over all appeals.

JUDGE BROWN: I just want to say to you that if Judge Speer is right, I want you to kill this bill. If it is going to give us 2000 applications we will be worse off than we are. But I undertake to say my judgment is it will do no such thing, and that it will put the business under the control of the Supreme Court so that they can handle it. Now, excuse me just for a minute. I have believed that it was my duty as a member of the Supreme Court to come before this body with this measure and submit it.

I am not tied to this bill, nor any other measure. I have brought it here and submitted it to you. Dispose of it as you please, and whichever way you dispose of it will satisfy me, because I have nothing in the world to do but serve the State of Texas in doing whatever they prescribe. If they do not see fit to put it in shape that we can give really good service, then I will have performed my duty, and those who are associated with me will have presented the matter to you for your consideration. (Applause.)

MR. FRANKLIN (in the chair): Gentlemen, as I understand the question before the Bar Association is the motion as to whether section six as amended shall be stricken out or remain in this report.

MR. ESTES: To vote "aye" means it shall be stricken out?

MR. FRANKLIN (in the chair): To vote "aye" means it shall be stricken out, and to vote "no" means it shall remain as it is reported and amended by the committee.

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The question being put and a viva voce vote taken, the chair stated that in his opinion the noes had it and the motion to strike out was lost. A division was called for and Mr. Lewis Bryan and Mr. Maco Stewart were appointed by the Chair to count the votes. A rising vote being taken the tellers announced that there were 16 votes in favor of the motion and 28 against, and the motion to strike out was declared to be lost.

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MR. HAWKINS: I suppose the question will recur on the adoption of the report of the committee as a whole. In that connection I would like to ask the indulgence of this body to present a report on behalf of the committee on jurisprudence, which covers somewhat the same subject-matter, in order that the entire subject, as presented in the two reports, may be before the body. If there is no objection I would like to present that report.

MR. FRANKLIN (in the chair): What are the wishes of the body?

MR. HAWKINS: It deals with the subject of the commission.

MR. FRANKLIN (in the chair): Does the Association desire that it shall be presented now?

JUDGE WILKINSON: I feel constrained to object. We have got a single, definite subject before us now, and that launches us onto an unknown sea.

MR. FRANKLIN (in the chair): I understand this report is before the house for consideration, and that no additional report from any other committee would be in order unless consented to by the Association.

JUDGE BROWN: I wish to ask the Association to dispose of this matter one way or the other.

MR. FRANKLIN (in the chair): Then I understand the question before this body now is whether or not the report of the committee as amended after it came in here, by the changing of the wording of section six, shall or shall not be adopted. Are you ready for the question?

MR. HAWKINS: I offer this amendment. I suppose, though, the vote carries the entire bill, so I may be too late on this.

MR. GLASS: No; we just simply voted on the motion to strike out section six.

MR. HAWKINS: Then I am in order?

MR. FRANKLIN (in the chair): Yes.

MR. HAWKINS: Then I move to amend by striking out the section which reads, "Those where the validity of the statute of a State is involved," and make it read: "Those involving the construction or application of the Constitution of the United States, or the Constitution of this State, or of an act of Congress, and those involving the validity or construction of a statute."

MR. FRANKLIN (in the chair): No. 3 in the bill now is, "Those involving the validity of statutes."

JUDGE JENKINS: Don't you know we are a statutory State, and practically every decision involves the construction of a statute? Why don't you leave that like you had it?

MR. HAWKINS: Well, I had great doubt as to whether this should be inserted.

JUDGE JENKINS: The construction of a statute means everything. However, I do not want to interfere while you have the floor.

MR. HAWKINS: I state there is grave doubt in my mind as to

whether this phrase, "or construction" ought to be in there. As to the rest, my judgment is clear, it ought to be embodied in this bill.

MR. H. G. ROBERTSON: It will enlarge the jurisdiction of the Supreme Court on every subject that goes before it.

MR. HAWKINS: I was inclined to think on the hurried suggestion that was made to me this morning, that it ought to be there. I believe now probably it ought to be stricken out, and then if anybody cares to they can insert it. I have so much doubt about it that I do not want to stand for it. Now it reads: "Those involving the construction or application of the Constitution of the United States, or of the Constitution of this State, or of an act of Congress, and those involving the validity of a statute." I move the adoption of this amendment.

JUDGE WREN: I second it.

JUDGE JENKINS: I wish to call your attention to the fact that when we have adopted section six, which gives jurisdiction to the Supreme Court in all cases, it is idle to say that they shall have it in some cases. We could safely strike out all the rest of the report. Section six covers it all. You might just as well say that they shall have jurisdiction in all cases involving the substantive law, and in all cases in which John Smith is a party, because it covers the whole ground.

MR. HAWKINS: Will you permit a question before you yield the floor?

JUDGE JENKINS: Yes, sir.:

MR. HAWKINS: I concede the force of your argument, but inasmuch as this bill does name certain things, would it not be better to make the enumeration more complete, and in that way vote our desire that it shall certainly include them *eo nomine*?

JUDGE JENKINS: I am willing for the responsibility for that kind of a bill to be with its proponent. I shall vote against the bill, which will put me in the attitude of—

MR. HAWKINS: There are certain other sections to be left, which are not as important as this one, and for that reason I think we should put this in.

JUDGE WREN: I have seconded this motion of Judge Haw-

kins to make this amendment. I voted against the leaving in of section six because, as I conceive it, there is absolutely nothing definite in section six as to the jurisdiction of the Supreme Court. No man can read section six and tell whether or not he is going to have the jurisdiction of the Supreme Court in any particular case. Therefore, I think, if we are to adopt the recommendation with section six in it, the more definite provisions we put in the bill with reference to jurisdiction, the better the bill will be. I shall probably vote against the whole bill, but I want to amend it in this way if we are to have it all.

MR. FRANKLIN (in the chair): I understand—I hope some gentleman will correct me if I get wrong on parliamentary usage—that we are now to vote on the question of whether section three is to be amended according to the amendments submitted by Judge Hawkins.

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The question being put, the motion to amend was lost.

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MR. HAWKINS: I offer this amendment: "Amend section five by inserting after the word 'the' the words, 'The State, the head of a department, or,' making the said section read as follows: 'Those in which the State, the head of a department, or the Railroad Commission is a party.'"

MR. BRYAN: Will you read No. 5 as it is now?

MR. HAWKINS: No. 5 reads now, as presented by the committee, "Those in which the Railroad Commission is a party." Now, in addition to what has been said, with a view of making this enunciation of principles of jurisdiction more clear and definite, I want to add to this argument. There is no more reason why questions coming up from the Railroad Commission should go before the Supreme Court of Texas than those from the other departments of the State government, and the more you think about it the more the truth of it will be apparent. Why should we single out questions arising involving the action of the Railroad Commission, and make them prominent by specific enumeration, and vote down a proposition relating to the other departments of the State government? It does seem to me that in a matter affecting the entire people, affecting the finances of the State, affecting the lands of the

State, affecting 150 or 200 domestic and foreign insurance companies, with a combined capital of millions of dollars, affecting 700 State banks and trust companies in Texas, with a combined capital of many millions of dollars, and all these other interests represented by the other heads of departments, that they ought, at least, to have as much consideration as the Railroad Commission. I believe that in the last analysis the jurisdiction of the Supreme Court ought to extend to those questions coming up from the Railroad Commission, but I think its jurisdiction ought also to extend to those other questions of vast governmental concern.

JUDGE JENKINS: I second the motion.

JUDGE BROWN: I believe that the section ought to be amended so as to include the State. It is an omission. Whenever the State, as a State, is a party to a suit, it ought to have the right to go to the Supreme Court. I am not in favor of the amendment to the extent that it goes. I think it is unnecessary in the greater part of it. I won't take time to answer Judge Hawkins, but he magnifies the necessity of heads of departments going to the Supreme Court. To my mind, they do have less in a great many of their cases that come before us than any other interest in the State. A fight between the Comptroller and somebody about issuing a license to sell whisky, or a fight between the Commissioner of the Land Office and two parties out in the country as to which one got on a tract of land first—that is about the importance of their cases.

MR. JONES: We might ask that the amendment be divided, so that we can vote on the addition of the State.

MR. HAWKINS: I have no objection to a division. I only want to test the desire of the house.

MR. BRYAN: I move as a substitute to Judge Hawkins' resolution that section five be amended so as to read, "Those in which the State or the Railroad Commission is a party."

MR. JONES: The objection to that would be that if we vote down the substitute it might have the wrong effect, whereas, if Judge Hawkins will offer them separately, as two amendments—offer first his amendment adding the State—we can vote on them.

MR. HAWKINS: I think that is better and will adopt that sug-



gestion, and I move that it be amended so as to include suits where the State is a party.

MR. FRANKLIN (in the chair): The Railroad Commission or the State?

MR. BRYAN: The substitute that is offered is that it be that way.

MR. FRANKLIN (in the chair): As I understand, Mr. Bryan, though, if we adopt the substitute we have amended section five, and it is not properly subject to amendment again, but the way Mr. Hawkins suggests we get a vote upon both of his propositions.

MR. BRYAN: All right. I have no objection to that.

MR. FRANKLIN (in the chair): Then we are voting upon the amendment to make it read in all cases where the State or the Railroad Commission is a party.

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The question being put, the amendment was unanimously adopted.

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MR. HAWKINS: Now I renew the motion that it be further amended so as to include suits in which the heads of departments of the State government are parties.

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The motion was duly seconded.

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MR. FRANKLIN (in the chair): I ask permission to ask Judge Brown a question on that, because I may have to vote on it myself, and I do not exactly understand it. In specifying these special instances in which the Supreme Court shall have appellate jurisdiction, is it intended that in those instances the opportunity to go to the Supreme Court is not a privilege, but a right?

JUDGE BROWN: I think whenever they come within the terms of the law it is a right, as much as it is now.

MR. FRANKLIN (in the chair): What I am getting at, is this: If under section six cases come up which are not embraced in these specific numbers here, such as an appeal from a mandamus proceeding, or something of that kind, is it intended that those cases shall be covered by section six also, and is limited that appeals are only allowed where substantive law is affected?

JUDGE BROWN: I understand that under section six any case, no matter what its character, or whether it is a proceeding by any method, in which the Courts of Civil Appeals have erroneously decided the substantive law of the case, that is, the law upon which the right of the party depends, the Supreme Court has jurisdiction and will have to consider the application.

MR. FRANKLIN (in the chair): Now, Judge Hawkins, will you please let me hear your amendment again?

MR. HAWKINS: It is that the section be further amended so as to include suits in which any head of a department of the State government is a party.

MR. MACO STEWART: I second it.

JUDGE BROWN: I won't make any further opposition than to say that I think Judge Hawkins is mistaken as to the importance of that, and it is those mandamus cases against the Commissioner of the Land Office and against the different heads of departments that give us more trouble than a suit for a league and labor of land.

MR. HAWKINS: Those mandamus suits all originate in the Supreme Court.

JUDGE BROWN: Certainly they do.

MR. HAWKINS: But are there not many questions that arise in the District Courts and other courts in which the heads of departments are involved, and which are practically suits against the State, as completely as if the State were a technical party?

JUDGE BROWN: I really can not call to mind a case in which an officer could be sued individually and bind the State for any of its property. If such a thing can be done—

MR. HAWKINS: I do not say it can affect the property of the State, but I say for instance, an injunction against the Commissioner of Insurance and Banking, affecting the entire operation of the department upon a given point.

JUDGE BROWN: Why should the Commissioner of Banking have any more right to go to the Supreme Court than anybody else?

MR. HAWKINS: For the reason that it vitally affects the functions of the State government, and no other reason, and I consider that a conclusive reply.

JUDGE BROWN: I do not think it does. It is just a question between him and some banker as to whether the banker shall have a license, or something of that kind, and if they ever had a case there involving anything more than an individual right of somebody that wanted something out of the Commissioner's department, I never heard of it. They come there and they want the Commissioner to do certain things, and under the present law they come to the Supreme Court for a mandamus for it. Any other Court could just as well decide that question as the Supreme Court, and can just as well decide that as they can a question that involves property rights.

MR. HAWKINS: Let me present a case to you. There was an injunction against the Commissioner of Insurance and Banking restraining him from keeping closed a bank which he had closed under a discretion which was vested in him by law, upon the basis that its affairs were not being administered for the protection of its depositors and creditors. Now, that involved a question of discretion on the part of the Commissioner, and incidentally involved the question of discretion upon the part of every officer clothed with discretion in the State of Texas. Why should not the Supreme Court pass upon a question ramifying the entire government like that?

JUDGE BROWN: Because it has no right to issue a mandamus against a man who is clothed with discretion. If he has discretion to do it we can not issue mandamus.

MR. HAWKINS: But the suit was brought in the District Court.

JUDGE BROWN: If it was brought in the District Court we would have no power over it except the right of granting a writ of error, and I can not see myself why such a question as that should have precedence over any other property right. I do not understand why the distinction should be made.

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The question being put, the amendment to include heads of departments was lost, the vote being viva voce.

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MR. FRANKLIN (in the chair): Now we come to the question whether the report as amended shall be adopted. Are you ready for the question?

The question being put to a viva voce vote, the report as amended was adopted.

On motion, duly seconded, the meeting recessed until two o'clock, p. m.

### JULY 3, 1912—AFTERNOON SESSION.

THE PRESIDENT: The convention will come to order.

MR. SEARCY: Before you proceed with the business of the afternoon, the Board of Directors have a further report to make with reference to some additional membership. I will ask the Secretary to read it.

GALVESTON, July 3, 1912.

*Hon. R. E. L. Saner, President Texas Bar Association:*

The Board of Directors beg leave to report that the following persons have applied for admission to membership in this Association and the Board of Directors having duly considered the applicants and found the applicants qualified for membership, hereby respectfully recommend that they be elected to membership in the Association.

Those recommended are as follows:

Harris P. Darst.....	Richmond.
A. E. Amerman.....	Houston.
W. L. Dean.....	Huntsville.
W. C. McKamy.....	Dallas.
Edward H. Moss.....	LaGrange.
Geo. A. Hill, Jr.....	Houston.
Clay S. Briggs.....	Galveston.
Geo. S. King.....	Nacogdoches.
C. T. Butler.....	Beaumont.
Aaron W. Pleasants.....	Houston.
Hugh L. Stone, Jr.....	Houston.
Seth S. Searcy.....	San Antonio.
R. L. Daniel.....	Victoria.
W. E. Monteith.....	Houston.
John E. Green, Jr.....	Houston.
K. C. Barkley.....	Houston.

Respectfully submitted,

W. W. SEARCY,  
Chairman Board of Directors.

MR. A. E. WILKINSON: I move that the report of the Board of Directors be approved and the Secretary be authorized to

cast the vote of the Association for the election of the gentlemen named.

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The motion was duly seconded and unanimously adopted.

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THE PRESIDENT: The next order of business is the report of the Committee on Jurisprudence and Law Reform, William H. Burges of El Paso, chairman. Mr. Burges is not here and we will pass to the next question.

MR. HAWKINS: I am one of the committee, and I am ready to read the only report which has been prepared.

THE PRESIDENT: I thought we would wait until Mr. Burges came in, as I would rather have as many of that committee as possible here at that time, if it is not objected to, and we can take up the other report in the meantime. The next report is the report of the Committee on Judicial Administration and Remedial Procedure.

*Hon. R. E. L. Saner, President Texas Bar Association:*

Your Committee on Judicial Administration and Remedial Procedure submit the following report, which, in the main, is a condensation of the report of Prof. Roscoe Pound of Harvard, written for the American Bar Association:

"1. A practice act should deal only with the general features of procedure and prescribe the general lines to be followed, leaving details to be fixed by rules of court, which the courts may change from time to time as actual experience of their application and operation dictates.

"2. In framing a practice act or rules thereunder, careful distinction should be made between rules of procedure intended solely to provide for the orderly dispatch of business, saving time and maintenance of the dignity of tribunals, on the one hand, and rules of procedure intended to secure to all parties a fair opportunity to meet the case against them and a full opportunity to present their own case, on the other hand; rulings on the former should be reviewable only for abuse of discretion, and nothing should depend on or be obtainable through the latter except the securing of such opportunity.

"3. The sole office of pleadings should be to give notice to the respective parties of the claims, defenses and cross-demands asserted by their adversaries; the pleader should not be held to state all the elements of claim defense or cross-demand, but merely to apprise his adversary fairly of what such claim, defense or cross-demand is to be.

"4. No cause, proceeding or appeal should be dismissed, rejected or thrown out solely because brought in or taken to the wrong court

or wrong venue, but if there is one where it may be brought or prosecuted, it should be transferred thereto and go on there, all prior proceedings being saved.

"5. The equitable principle of complete disposition of the entire controversy between the parties should be extended to its full extent and applied to every type or proceeding.

"(a) The courts should have power and it should be their duty in every sort of cause or proceeding to grant any relief or allow any defense or cross-demand which the facts shown and the substantive law may require.

"(b) No cause or proceeding should fail or be dismissed for want of necessary parties or for non-joinder of parties, but provision should be made to bring them in.

"(c) Joinder of all parties proper to a complete disposition of the entire controversy should be allowed in every sort of cause, and at every stage thereof, even though they are not all interested in the entire controversy.

"(d) Courts should have power in all proceedings to render such judgment against such parties before it as the case may require in point of substantive law, to render different judgments against different parties or in favor of some and against others, whether on the same side of the cause or not, and to dismiss some and grant relief to or against others, imposing costs in case of misjoinder or unnecessary joinder upon the party or parties responsible therefor.

"6. So far as possible, all questions of fact should be disposed of finally upon one trial—to give effect to this principle, four propositions may be suggested:

"(a) Questions of law conclusive of the controversy or of some part thereof should be reserved and a verdict should be taken subject thereto, if the questions are at all doubtful, with power in the court and in any other court to which the cause may be taken on appeal, to enter judgment, either upon the verdict or upon the point reserved, as its decision is found to be wrong, if separable.

"(b) In case a new trial is granted, it should only be a new trial of the question or questions with respect to which the verdict or decision is found to be wrong, if separable.

"(c) Wherever a different measure of relief or measure of damages must be applied depending upon which view of a doubtful question of law is taken ultimately, the trial court should have the power and it should be its duty to submit the cause to the jury upon each alternative and take its verdict thereon, with power in the trial court and in any court to which the cause may be taken, on appeal, to render judgment upon the one which its decision of the point of law involved may require.

"(d) Any court at which the cause is taken on appeal should have power to take additional evidence, by affidavit, deposition or reference to the matter, for the purpose of sustaining a verdict or judgment when:

ever the error complained of is lack of proof of some matter capable of proof by record or other incontrovertible evidence, defective certification or failure to lay the proper foundation for evidence which can, in fact, without involving some question for a jury, be shown to be competent.

"7. No judgment should be set aside or new trial granted for error as to any matter not involving the substantive law or the facts; that is, for error as to any matter of procedure, unless it shall appear to the court that the error complained of has resulted in a miscarriage of justice.

"8. So far as they merely reiterate objections already made and ruled upon, exceptions should be abolished; it should be enough that due objection was interposed at the time the ruling in question was made.

"9. An appeal should be treated as a motion for rehearing or new trial or for vacation or modification of the order or judgment complained of, as the cause may require, before another tribunal. And corollary—

"Upon any appeal in any sort of cause, the court should have full power to make whatever order the whole case and complete justice in accord with substantive law may require, without remand, unless a new trial becomes necessary."

In order that we may the better accomplish the results suggested in the foregoing statement of principles, the undersigned members of your committee recommend that the Legislature repeal so much of our practice act as pertains to mere details of procedure and give the Supreme Court a freer hand and more authority to control such matters by rules of court rather than by formal legislative enactments. Making a practical application of these principles to the facts as they exist in Texas, we recommend as to the District and County Courts:

(1) That the stenographers' law be repealed and that the method of taking down evidence and preparing statement of facts and filing same be by rules of court.

(2) Repeal the articles of the statute governing pleading and leaving the matter to be governed by rule of court.

(3) Repeal Chapter 6, Title 30, governing process and returns.

(4) Repeal Chapter 11, part of Chapter 12 and all of Chapter 13 of Title 30 governing trial of causes, including charging the jury and the verdict and let it be controlled by rules of court, except that so much of Chapter 12, concerning charges and instructions to the jury as requires a written charge on the law of the case to be given by the judge, be not repealed.

(5) Repeal Chapters 14 and 15 of Title 30 concerning judgments and remitter and amendment of judgments and leave it to rules of court.

(6) Repeal Chapter 16 of Title 30 concerning bills of exception, leaving this to be controlled by rules of court.

(7) Repeal Chapters 17, 18 and 19 of Title 30 concerning new trials and arrest of judgment, statement of facts and appeal and writ of error, leaving these matters to be regulated by the rules of court.

(8) Repeal Chapter 20 of Title 30 concerning costs and security therefor and so much of Chapter 21 as pertains to motions and substitution of lost records and papers, leaving these matters to rules of court.

We make these recommendations because if mere matters of practice and procedure should be embodied in legislative enactment it is difficult to get them changed or modified should a change or modification be desirable. Such questions do not appeal to the ordinary legislator or citizen and only to the judge or lawyer actually trying cases who is impressed with the necessity for the change or modification. If any lawyer appeals to the Legislature for a change in a mere rule of practice or procedure, it is at once suspected that he has some special and selfish interest to subserve, and it is difficult, if not impossible, to get the members of the Legislature to leave off the chase of the corporations and "special interests" and trusts long enough to give such a dry and tame subject any consideration. If the matter is considered by a committee it is composed of lawyers and the difficulty of getting them to agree upon a rule of practice or procedure is almost insurmountable. If the Supreme Court is given a free hand in the matter and a suggested change or modification be called to the court's attention, we would have a small body of men to act who would understand the subject and could appreciate whether or not the suggestion was worthy of serious consideration and if so, could act promptly.

L. R. BRYAN, Chairman.

T. S. REESE.

THE PRESIDENT: You have heard the report. What shall be done with it? The chair is ready to entertain a motion.

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It was moved and seconded that the report as submitted be adopted.

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THE PRESIDENT: It is moved and seconded that the report as submitted be adopted. Is there any discussion?

MR. W. D. WILLIAMS: Does the adoption of the report mean its endorsement by the Association? Reference has been made very briefly to chapters and titles, so that I really do not know what is in it.

MR. BRYAN: It is a practice act, that is all—a method of practice and procedure. It proposes to leave it to the rules of the



Court. I have the digest here, and if it is desired I can take it up one by one, if you care to consider it that extensively.

MR. C. K. LEE: I move as an amendment that the report be received and filed and published in the annual report, and be left for the digestion and consideration of the members of this Association. I think it will take about a year to digest it.

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The motion to amend was duly seconded.

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THE PRESIDENT: The motion to amend is to receive the report and file it, and have it published in the proceedings. Is there any further discussion?

MR. FRANKLIN: I did not hear fully all the report. I want to ask if a matter that has been considered heretofore is in the report. When I was a member of a somewhat similar committee my recollection is I took up with the committee a matter that is a question of cost largely, a question of saving labor, and that is this: Under our statute we have to file our motion for rehearing or new trial within two days, I think it is—I forget what time it is, but some very short time. Now, as a matter of fact, we file our motion for a new trial within that time, and we do not have the record before us, and we prepare a little, short motion, which we subsequently amend, and our real motion is our amended motion. Then we take that motion for a new trial, and when we make out our assignments of error we copy it into the assignments of error, and make the assignments of error practically our motion for new trial, or rather, make our motion for new trial practically our assignments of error. Again, when we file a motion for rehearing in the Court of Civil Appeals we again have our assignments of error copied, simply saying: "The Court of Civil Appeals erred in overruling this assignment." Then when we go to the Supreme Court of the State, our assignments of error to the Supreme Court, leaving out those assignments that raise merely questions of fact, are practically a copy of the assignments of error in the Court of Civil Appeals. The result is that you have a great, long motion for new trial, a long assignment of error, a long motion for rehearing, and an application to the

Supreme Court for writ of error, and one is practically a copy of the other. There is a little change in verbiage, and that is all. My idea has always been not to require a motion for new trial to be filed within two days, but to give a greater length of time for it to be filed, and if the Court adjourns or its term expires before the time expires within which a motion for new trial could be made, let the Court act on that motion, if it is constitutional for it to do so, in vacation, and enter its order as within term time. Your motion for new trial then would constitute your assignments of error in the Court of Civil Appeals, would constitute practically your motion for rehearing in the Court of Civil Appeals, except as to such additional grounds as you desire to set up in your motion for rehearing, and would constitute your application, really, to the Supreme Court of the State. You save all the time in copying the papers, you save all the expense, you make your records less voluminous, and it has been a sort of pet idea of mine that reform along that line might be accomplished. I am stating my views very crudely, but I wanted to get before the house whether under Mr. Bryan's report that is a matter that could be regulated by the rules of the Supreme Court.

MR. BRYAN: Yes, sir. The idea we had in mind was to let matters of practice and procedure be governed by rules of court rather than by legislative enactment. The Courts find that a legislative enactment with regard to a mere matter of procedure or practice puts the Court in a straight-jacket, and it can not be changed. We call your attention to the fact, and I think you will all bear me out, that if anybody goes up to the Legislature and asks the Legislature to have a bill passed changing the practice act, they think right at once he is looking out for some special case. Some gentlemen mentioned it this morning—Mr. McKamy, I believe it was—that there were cases in which men were actually getting laws passed, or changing the rule of practice, in order to meet some case they were interested in. Now, the idea is to let all matters of procedure and practice be controlled by the rules of court, and not by legislative enactment.

MR. FRANKLIN: Then your idea is to give the Supreme Court

the same right to establish rules of practice that it has in equity practice? That is the idea?

MR. BRYAN: That is the idea.

MR. FRANKLIN: Now, would that be broad enough to allow them to establish a rule covering the matter I have mentioned?

MR. BRYAN: If you repeal the statute with reference to filing motions for new trial, then the rules of court will determine it.

MR. FRANK C. JONES: The motion before the house by Mr. Lee practically kills this thing for another year, if it is adopted by this Association.

MR. BRYAN: Just decently buries it.

MR. JONES: That is the object of the motion, to bury this thing for another year. It seems to me, after all the talk we have had in this Association, that now is the time to do things, and now is the time to progress, and not merely to stand about and die of dry rot. As I understand this committee's report, I am willing to be governed by the committee's report, when one of our appellate judges, like Judge Reese, is a member of the committee, and Mr. Bryan, a former president of this Association, and other men who are not here, like Yancey Lewis and Judge Brooks.

MR. BRYAN: Well, Judge Brooks did not indicate what part he favored. Mr. Spoonts is against it.

MR. JONES: As I understand the report of the committee, boiled down, it is simply this: That they propose to do what they have done in England for forty years, and we are simply forty years behind the times. They let their courts prescribe rules of procedure, and they do not have to go and legislate every year or two for any change in those rules. As we progress in civilization, as our commercial life is constantly changing, our Supreme Court can certainly be trusted by the people of this State to follow it up with rules of procedure that will protect the Courts and protect the people, but we have tied the hands of the Supreme Court by statutory enactment, it being provided that they shall have power to make such rules for the guidance of the Court as they may deem advisable, except where already made by statutory enactment. I understand the report of this committee takes away the legislative enactment,

takes the bridle off the Supreme Court, and allows the Supreme Court by rules to prescribe the procedure. I know recently the Supreme Court passed rules of procedure, amending rules we already had, and it was doubted by many members of the Bar throughout the State whether or not they had not gone beyond some of our legislative enactments and thereby made some rules nugatory to that extent. Now, this committee's report, as I understand it—I may be in error—whatever the number of articles, or whatever the number of those amendments, simply does that one thing, that is: It asks the Legislature to repeal those statutes where they have made iron-clad rules about practice, such as Judge Franklin suggests—two days to file a motion for new trial, filing statements of facts, arrests of judgment, process, and all those things. The Supreme Court can then any day amend our rules, or make new rules, simplifying the practice, and can change it from year to year, as the Supreme Court in its wisdom may determine, and not have to go and get a legislative enactment, with the slow process incident to a thing of that kind. Now, will we do any better a year from today? Maybe you won't all be here and we won't have men in this hall as well qualified to pass upon it as you are today, to decide that question. Shall the Legislature continue to make the rules, which have handicapped the Supreme Court in giving us simple rules of procedure, or are we willing to trust the Supreme Court to give us the rules we now have, with amendments, or to give us new rules, simplifying the practice of this State? I am in favor of the committee's report, because we can certainly trust our Supreme Court.

JUDGE REESE: Mr. President, my name is signed to that report, and I approve of it thoroughly, but I told Mr. Bryan I thought it was really a little too advanced for this Association in its present state of enlightenment. (Laughter.) I may be mistaken about that. It is a pretty long step in advance. My understanding is that forty years ago they had a provision in England for the appointment of what was called a "judicature committee," to which committee was turned over absolutely the regulation of the practice in the courts of that country, and that is one reason why they have such an ad-

mirable and simple form of pleading and procedure, about which so much has been said and written lately, which enables them to determine and dispose of cases with so much expedition, and which lessens the necessity and the occasion for new trials in appellate tribunals. We have read a great deal about that. A great deal has been written about it. It is not worth while to undertake to minimize the importance really of these suggestions that are made in this report. They are very far-reaching indeed. There is no question about that. I think they ought to be adopted, because I think they would be an admirable improvement over our present system, and I do not suppose there is hardly a lawyer here who would not rather try his case in court under rules promulgated by the Supreme Court of the State than under rules promulgated by the Legislature. They know better what ought to be done. They are less apt to be moved by any outside consideration, or any ulterior motive than a Legislature would be, and altogether they are better fitted to turn out a practical job of work in the matter of procedure and practice. Now, these recommendations Mr. Bryan has made here just simply provide that the entire practice and procedure acts, all of them, shall be wiped out. About the only thing Mr. Bryan has left is a positive provision that the judge shall in a court of record deliver a written charge to the jury. He was not willing to leave that to the Supreme Court. I was, but he was not, and he leaves that in the practice act, and that is about all that he does leave in all of our acts of the Legislature providing for the progress of a law suit through the court from the time the petition is filed until the final judgment is rendered in the court of last resort, and he turns the whole matter over to the Supreme Court to give us, instead of them, such rules of procedure as in their wisdom, in the light of the experience of the past years, are necessary and practical. My objections to that at first, when Mr. Bryan first presented it to me, were two. The first objection I have still and that is that it is almost hopeless to undertake to get the Legislature to abrogate that much of its power. I am still of that opinion. My other objection was that it would impose too much labor upon the judges of the Supreme Court, in the present

over-taxed condition of the docket of that Court. Speaking to Judge Brown with regard to the latter objection, he said that so far as he was concerned he would be glad to undertake the work, and that in view of its importance to the State of Texas from every point of view he was satisfied the Supreme Court would be perfectly willing to undertake the work imposed upon them by this change in the law. So that disposed of my second objection, and the only objection I have left is that it seems to me that it is practically hopeless to induce or endeavor to get the Legislature now, in its present state of advancement, to adopt these changes. After awhile they will come, as every right thing can be depended upon to come about sometime, but that sometime is a long time. We can try, however, and if the Legislature turns us down we will only be where we are now. We are down now, and for that reason I do not see what possible harm can come from this Association's putting the stamp of its approval upon these recommendations which Mr. Bryan has presented. (Applause.)

THE PRESIDENT: Gentlemen, I do not want you to feel that I am trying to push matters too fast, but we have a great deal of work to do, and if there is no one else to speak upon the proposition I will put the question, if you have made up your minds on it. Still I do not want to cut off any discussion. The motion first made was to adopt the report. The amendment to that motion was to receive it, file it, and publish it. I will put the amendment before the motion.

MR. MCKAMY: Just a minute, Mr. President. I think this report is the most important thing that has been before this body since we met. I feel like it would be a guide for the Legislature to act upon. I feel like the Legislature might adopt this. They, like we, have more confidence in the Supreme Court than any other body. I believe they will concede to the Supreme Court the right and power and authority to make these rules. I believe the Supreme Court would do it. I see no reason why they should not. Every other body makes its own rules, from top to bottom. Why should not the Supreme Court make these rules? We have advanced slowly because we have advanced half the time in the dark, with the Legislature. It takes them a long

time, as Judge Reese has stated, to get the information necessary to pass these acts. Now you have an opportunity to do the right thing right now that we have been talking about for a long time. I would like to see this motion to receive and file withdrawn, and I would like to see this report adopted. I am like Judge Reese—I do not see any harm that can come of it. If it is not adopted by the Legislature we will not be in any worse condition, and if it is passed you will have accomplished more than you have accomplished in ten years. I would like to see this motion withdrawn, and would like to see this report adopted.

THE PRESIDENT: Does any one else desire to speak to the motion?

MR. FRANKLIN: I have not had time to digest the report, but I am going to vote for the report because I believe it is a step in the right direction, and if careful analysis of it hereafter should change my view in regard to any of the features of it, I reserve the privilege of opposing it, but I think we may as well take this step now.

MR. C. K. LEE: I have only one or two suggestions to make in this connection. As I understand Mr. Bryan's report, he proposes to repeal all of our practice act and have a new one adopted by the Supreme Court. Now, I do not know about the balance of the members of the Bar—I will tell a little story in just a minute that may illustrate my position. Maybe I do not understand the rules, but they have not occurred to me as difficult. I have not found our practice very complicated. Up to this time I have been able to handle my cases without any very great difficulty. I took one year at Cornell Law School in the State of New York, and while I was there I was told—I do not know whether the statement is correct or not—that after Field's Code, fixing the civil procedure of the State of New York, was enacted into law, the purpose being, as Mr. Bryan's purpose is—and he is sincere in it—to simplify the situation, there were published 100 volumes in amount of Reports of the Supreme Court and of the Court of Appeals of New York, to construe the Field Code.

JUDGE REESE: That was a legislative enactment.

MR. LEE: Gotten up by a committee of lawyers, and adopted

by the Legislature as gotten up by them without a change, by a representative committee of five leading lawyers of the State of New York.

MR. BRYAN: Was it a practice act only, or wasn't it undertaking to reform every phase of the Court?

MR. LEE: No, sir. They adopted a penal code, too. They were authorized by the Legislature and empowered to adopt three codes—a penal code and a code of criminal procedure, and code of civil procedure, and a code of substantive law. I asked asked you to define substantive law this morning, and you can not do it. Nobody else can. (Laughter.)

MR. BRYAN: I can not do what nobody else can.

MR. LEE: Nobody else can, and make one that is correct. The State of New York adopted the penal code and they adopted the code of civil procedure. The so-called code of substantive law was not gotten up in time to submit it to the Legislature, and before it could be submitted to the people of New York had gotten enough of the other codes, and it never had a chance to pass. Now, just one other thing. Col. R. G. Street told me a story a long time ago, when I was studying law here, that appeals to me very strongly in this connection, one that I think will probably illustrate my predicament if Mr. Bryan's motion is carried through. I have got a sort of selfish interest in this matter. Col. Street said that when the Supreme Court adopted the rules we now have in force for preparing cases for appeal, they were first promulgated over at Tyler. The lawyers got there and were getting their briefs ready, and the leading members of the Bar could not understand the rules. They were not sure as to their course of procedure, how the briefs ought to be gotten up, and what ought to be done, and I will say in passing that I do not think many lawyers in this State still know, but let that go. But there was one lawyer there who had only one case. He did not do very much practice, and he was not regarded as much lawyer, but he told the members of the Bar: "There is no difficulty about these rules. They are very plain and very simple, no difficulty about them at all." He proceeded to prepare his brief and submit it, and the Supreme Court proceeded to strike the brief out because it was



not in conformity to the rules. Then some lawyer said, "What do you think about the rules now?" He said, "The rules are perfectly plain. The only difficulty about them is that the Supreme Court don't understand them."

I have been told by a member of this Bar since I have been at this Association, that he asked Judge Brown about the new rules of the Supreme Court, and he said they provided for one thing, and Judge Brown said they did not mean that, that that was not the proposition at all.

Now, the proposition I make to you gentlemen is, that there has been a whole lot of talk about this reform in procedure. I do not see anything wrong especially with our procedure. I think it is as simple as any system I have any knowledge of at all, infinitely simpler than the procedure in the United States Courts in Equity, where the Courts make the rules. We all understand it. We have gotten familiar with it. The provisions of the statute have been construed. They are settled. The beauty of the law is the certainty of the law, and the issue I take with Mr. Bryan is that I object to his making the law uncertain by branching out into a new field and starting over again. (Applause.)

MR. BRYAN: Mr. President: It seems to me from the experience we have had that we should start over again on some things. Take the stenographers' act. I do not think Mr. Lee would consider that—

MR. LEE: I would repeal it.

MR. BRYAN: That is just what this report says. That is the first thing it purports to do.

MR. LEE: But I would get up another one.

MR. BRYAN: And it would go on to state how a statement of facts should be made, which should be done by a rule of Court, and I think the Supreme Court of Texas would not have had the absurdities we have had in the several stenographers' acts, if it had made the rule for making up statements of facts, but you undertake to change it, and you will see coming before the Legislature at once the proposition that some lawyer is up there trying to do it because of some case or some special interest that he wants to subserve. That is the trouble when

you get before the Legislature, and the point in my mind is that I do not want the Courts to be, as I said before, in a legislative straight-jacket. But whenever rules of procedure, mere rules of practice, ought to be changed, and we all agree that they ought to be changed, and the Courts agree there should be a change, the point is that the Supreme Court then can make that change, and they will do it on their own motion when they see it ought to be done, and they are not so strict. In construing or in enforcing a legislative enactment the Court feels that it is bound by it and can make no digression either one way or the other, but rules can be to some extent bent—the rules of the Court. They are mere rules of procedure and not positive legislative enactments. Mr. President, and gentlemen of the Bar Association, the idea that I have is that the Supreme Court will probably re-enact the present practice act to a large extent, substantially as it is. The Legislature, Mr. Lee, will not repeal all we know about practice and procedure. I think there will still be a little something left, and the Court, I believe, will promulgate rules that will be substantially the practice act we now have, but it will be one that will be flexible. We will have a method and machinery that can be changed, and that will not remain a rigid system of iron-clad rules that are almost impossible of being changed when a change is needed.

MR. STREETMAN: Mr. President and gentlemen, I want to say with reference to this report, that the spirit of the report I am in favor of, that is, to the extent that it advocates such changes in our procedure as would simplify and make the practice both in the trial courts and on appeal easier, and prevent reversals on account of mere matters of procedure. But we are asked here to vote upon the repeal of numbers of statutes, by section and article. I do not know what is in them. I do not know what I am voting for in this report. I may vote for that report and I will go out and some man will tell me that I voted for something, and I won't know whether I did or not. And, really, I do not know whether I am in favor of committing this matter of making rules to the Supreme Court or not. My observation of that matter is not altogether satisfactory. The illustration has been used here with reference

to the equity rules of the United States Supreme Court, than which I do not think we will find in the whole body of our procedure a man obsolete and more inflexible set of rules—practically unaltered for nearly a century, and now, after years, in process of being revised, as I understand, by the United States Supreme Court. So, I do not know whether that is really the best tribunal to make the rules. But, my situation, really, with reference to this matter is, that I am not prepared to vote upon a report which its authors frankly state to you is far-reaching, which has not been put before the members of the Association, and which we have had no opportunity to study and consider. I should not like to be in the attitude of either opposing or favoring recommendations of this far-reaching nature without some opportunity to know at least what they are.

MR. BRYAN: The first proposition is chapters two and three of the practice act. One is headed, "Pleading in General," and the other, "Pleadings of the Plaintiff."

MR. STREETMAN: Well, I don't know those by heart.

MR. BRYAN: They are just general matters governing pleadings. That is all. Chapter six is, "Process and Returns," citations, and service had upon parties to bring them into court. Chapter eleven is, "The Trial of Causes." I hardly thought it was proper to set the entire statute all out. I have got them here, if you gentlemen want time to look them over and see what they are. Chapter twelve is, "Charges and Instructions to the Jury." Chapter thirteen is, "The Verdict," and other chapters are, "Judgments," "Bill of Exceptions," "New Trials and Arrest of Judgment," and "Remitter and Amendment of Judgment."

MR. J. W. TERRY: Mr. President and gentlemen, for fifteen years I have not occupied the attention of this Association to exceed ten minutes, but I want to make about a half a dozen remarks on this subject. The statement has been made here that the English practice act was adopted by a judicature committee of some kind. I am not prepared to dispute that as an historical fact, but, whatever was the origin of it, the English practice act is in the form of several acts of Parlia-

ment, one amendatory of the other. Reading in the newspapers all this vast criticism of the difference between English and American procedure, I asked a publisher to get me the book containing the English practice acts, and he reported that it could not be found, that there was no such book published, and I went to the expense of importing the English practice acts. They are in the form of acts of Parliament, published on long sheets, and they go so far into detail as to prescribe in many cases the form of the pleadings, or the statement which shall be made by the plaintiff in presenting his case, and by the defendant in presenting his defense. I think there are some good features in the English practice acts that might be combined with ours, and I believe that a committee of the Legislature, or of this Association, can take our practice act and go through it intelligently, and compare it with the English act, and anything else they wish to compare it with, and it might bring about some few small alterations in our practice act. But I believe that lawyers who are up against these propositions every day of their lives are better qualified to frame a practice act than our Supreme Court. No one has greater respect for that tribunal than I, but if the rules which our Supreme Court has prescribed governing the formation of briefs are a sample of what they might do under this vast authority that it is proposed to confer upon them, then I say, God forbid. I believe that those mechanical, school boy, syllogistic rules, whatever you may call them, add to the confusion of presenting any case to any court on earth. (Applause.) I believe if those rules were abolished and the Legislature would adopt the rules of the Federal Court prescribing the formation of briefs, and in addition to that adopt the suggestion of Mr. Franklin and prevent all this idle and unnecessary repetition, from the time you file a motion for new trial until you file your last document in the Supreme Court, it would reduce the labor not only of the lawyers, but the judges of the Courts of Civil Appeals and the Supreme Court anywhere from ten to twenty-five per cent. (Applause.)

MR. W. L. DEAN: I want to say a word. I do not feel that I am prepared to vote in favor of this report as it has been

read. There are so many things in it that are innovations, as Judge Reese and Judge Bryan say, that we have not had an opportunity to investigate, that I do not believe we ought to commit ourselves to them. I do not think many lawyers have had any special difficulty in understanding the practice acts as contained in our Revised Statutes. Speaking from my own experience, I know I encounter a great many more difficulties in understanding the rules that are prescribed from time to time by the Supreme Court than I ever had in understanding the plain provisions of our statutes. There is really very little just criticism that can be leveled against our practice acts, as embodied in the statutes. If you will amend the articles of the statute with reference to reversals, so that reversals shall be had only when material prejudice has resulted to a party against whom errors have been committed, I think you will solve the problem as relates to our practice. Our practice acts and the rules of the Supreme Court supplementary thereto are simple enough today. The Supreme Court has a right to prescribe rules of practice in all cases except where the Legislature has covered the exact point about which rules are needed. Now, if there is none, or no number of our present articles of the practice acts that are objectionable—and very few of them are objectionable—why not let them stand, and let the Supreme Court, as it has a right to do, supplement the practice acts as adopted by the Legislature, as occasion may demand, from time to time, repealing those provisions of the statutes requiring reversals in certain cases where the errors have not been prejudicial? Judge Reese says it is in advance of our times. Now, if we pass the motion of Mr. Lee and give us a year to catch up, maybe it will not be so much in advance of the times. One of the authors of the measure says it is in advance of the present time—and it seems that only two of the five or six members of the committee signed it—and so let us pass the motion proposed by Mr. Lee, and give us a chance to catch up. (Applause.)

THE PRESIDENT: Gentlemen, I think possibly every one has been heard on this, and we have consumed a good deal of time on it, and there are other pressing matters, and if you won't

think it too arbitrary I will put the motion without further discussion. It has been moved and seconded that the report be adopted. As a substitute for that motion a motion has been made to receive and file the report. I will put the substitute first.

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Thereupon the substitute was adopted by a rising vote, by a vote of 28 ayes to 13 noes.

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THE PRESIDENT: The hour arrived some minutes ago for the hearing of a paper by Judge W. H. Wilson of Houston, on "The Incorporation of Trading Companies Engaged in Interstate Commerce by a Federal Charter, and the Consequences Which Would Flow Therefrom."

(The paper of Judge Wilson is published in full in the Appendix.

THE PRESIDENT: Is Mr. Maco Stewart in the room? They have asked you to present the matters you have, and we will finish this part of the program right here.

MR. MACO STEWART: Gentlemen, there is a matter that I desire to call to the attention of this Association, that I believe is worth the consideration of any man who is engaged in the practice of law. It may be that some lawyers will differ with the view that I take of the decisions of the Supreme Court and Court of Appeals with relation to our statutes of registration, but I do not believe any man can consider these opinions and not reach the conclusion that our land titles are in such shape that no man is safe when he buys a piece of property.

Our entire title system rests on one article of the Revised Statutes—Article 4652. It is written as plain and as clear as the English language can make it. It in terms declares that every instrument relating to land, which is spread upon the record, shall be "notice to all persons." Now, "all persons" ordinarily means everybody. The Supreme Court of this State, in the case of Breen v. Morehead, a decision by Judge Brown, reported in 136 Southwestern, page 1047, absolutely wipes out Article 4652 as to conveyances theretofore made, and the Supreme

Court, in the case of *White v. McGregor*, in the Ninety-Second Texas, followed by the decision of the Court of Appeals in the case of *Fullenwider v. Ferguson*, in the Seventieth Southwestern, has absolutely cut off the statute of registration on the other end, until today we have no statute of registration. It is indeed a deplorable situation. It leaves the door wide open, so that if I sell Mr. Duncan there a piece of property today, and he examines the records, and finds it stands in my name, he pays me my money and becomes an innocent purchaser for value, if the week before, or the month before, I have sold the property to Judge Reese, and thereafter Judge Reese goes off and sells the property to Judge Townes, who buys the property and pays for it. Judge Townes is an innocent purchaser, takes the title and cuts out Mr. Duncan, though Mr. Duncan's deed is of record. They have decided that squarely.

Now, men may differ. Judge Brown tells me I do not exactly understand that decision. Maybe not. I have submitted that decision to quite a number of good lawyers, and I am about that a good deal like Pat. Pat walked up to the front gate, and he says, "Mike, Mike, come chain the dog." Mike says, "Come on in, Pat. The dog won't bite." "No, Mike, come out and chain the dog. I want to come in and talk with you awhile." Mike says, "Now, Pat, come on. Don't you know that a barking dog never bites?" Pat says, "That's all right, Mike. I know that barking dogs don't bite, and you know that barking dogs don't bite, but does the dog know the rule?" Now, I am that way about this decision. I don't know who knows the rule.

I am going to take this up hind side before. I tell you, gentlemen, that decision of *Breen v. Morehead* is the most far-reaching decision to destroy the land titles of Texas that has ever been rendered, and I have read every decision relating to that subject down to date. The case absolutely destroys the title to this vacant piece of property across the street, if anybody chooses to go and buy that property from the heirs of M. B. Menard. They hold in this decision of *Breen v. Morehead* that if John Smith located a league of land, it thereupon became his own property. After that location he could bring suit in trespass and eject the squatter. John Smith sells that prop-

erty to Bill Jones. Jones buys it and pays his money for it, and spreads his deed upon the record, and everybody believes that that deed to the purchaser would be notice. But ten years later, fifteen years later, the patent is issued to John Smith, the man who located it. Some enterprising land pirate notices it, and what does he do? He finds the heirs of John Smith, he buys that property, and the Supreme Court of this State says, "He is not charged with the notice of the deed that John Smith made to Jones, that is spread on the record twenty years before," because they say that a man who buys property need only examine the title of his grantor back to the date when his grantor bought it, and need not examine to see if his grantor had previously sold. In this county there is league after league of land to which patents issued long after the man had located it and had previously sold his property.

Now, some one may say that the courts do not say so. I say that they do say so, and I have but to refer to this case of *Breen v. Morehead*, in the 136th Southwestern, page 1047, a decision of Chief Justice Brown. It says:

"Bearing in mind that the title to the land was in the State at the time that McKelligon made his application to buy, it necessarily follows that the title of McKelligon originated in the sale to him by the State on his application dated the 6th day of July, 1887, which was about two years subsequent to the date of the deed made by him to Breen. This brings us to the question whether it was the duty of those who bought from McKelligon without any notice of the deed to Breen for a valuable consideration paid to look beyond the origin of McKelligon's title to ascertain the fact of previous sale to Breen. The rule of law which governs such transactions is stated thus by Mr. Tiffany in his work on Real Property: 'A purchaser is not, as a general rule, charged with notice of a conveyance which is of record, even though made by a person in the chain of title, unless it was made by such person after the time at which the records show him to have obtained the title; that is, the purchaser is not bound to search the records to determine whether any particular person in the chain of title, previous to obtaining the title, had done any acts which would affect the title.' "



A quotation is then made from Mr. Pomeroy on Equity and Jurisprudence, and I have that here, and they say: "How far back is a purchaser bound to search the record title of his own vendor? If the records show a good title vested in the vendor at a certain date, and nothing done by him after that time to impair or incumber the title, it would seem that the policy of the registry acts is thereby accomplished. The purchaser is protected. He is not bound to inquire farther back, and to ascertain whether the vendor has done acts which may impair his title prior to the time at which it was vested in him as indicated by the records." Then they cite quite a number of cases and say:

"The application of this rule of law to the present case can best be made by a statement of the facts as they must have occurred at the time. When each of the purchasers from McKelligon sought to make the purchase, it became his duty to see that there had been no previous sale or incumbrance placed upon the land. For illustration, we will suppose that Mr. Kern, who became the principal owner of the land, in making his purchase, should have gone to the record there, and found that the title of McKelligon originated in his purchase in 1887 and matured in a patent thereafter, he then examined the record from that time down to the date of his purchase, and found no instrument of any character recorded whereby the title from McKelligon would be incumbered or impaired. Now, let us suppose that Mr. Kern had undertaken to investigate the matter as to what might have transpired anterior to the sale by the State to McKelligon. If he must look beyond the origin of the title under which he was purchasing, then how far should he follow that record back in the course of time in order to determine whether McKelligon had made a previous sale of that land? If he required to go beyond the origin of the title, there could be no limit short of the vendor's life, and such requirement of purchasers would involve land titles in such uncertainty that it would be impracticable to rely upon any investigation. We believe that the rule stated above that the date when the title originated in McKelligon marked the limit of investigation for previous sales or incumbrances of that tract of land by McKel-

ligon should be applied here. It would be unreasonable to suppose that a man who had just received a title from the State had previously made a transfer of that land."

Now, the idea of the Supreme Court of Texas announcing such a doctrine as that—"it would be unreasonable to suppose that a man who had just received a title from the State had previously made a transfer of that land." I will venture to say that there are of record in Texas 50,000 such transfers. I know there are of record in Galveston county twenty of them. The opinion further says:

"That ordinary care and caution which the subsequent purchaser must exercise would not suggest an investigation for conveyances made before acquisition of title. It follows that the record of Breen's deed in El Paso county gave no notice to the subsequent purchasers from McKelligon, who had no actual notice and paid a valuable consideration for the land."

And yet article 4652 of the Revised Statutes says as plainly as it can be written, that a deed upon a record shall be notice to all persons, and I, therefore, say that decision absolutely wipes out Article 4652 and wipes it off the books.

Now, at the other end of it, they took another crack at it before that time, in the case of *White v. McGregor*, 92 Texas, 556. The decision there is probably correct, as far as the determination of who owned the land in that particular case was concerned, but there is no misunderstanding and no misconstruing what the Supreme Court said in this case. I will read a small part of this opinion:

"The proposition is frequently announced that, under the registration laws, the proper record of an instrument authorized to be recorded is notice to all the world. Although the language of Article 4652 of the Revised Statutes gives countenance to the doctrine as thus broadly stated, it has been decided by this Court that the proposition is subject to important qualifications."

That, of course, we will all concede. "For example," the opinion continues, quoting another case, "the registry of a deed is notice only to those who claim through or under the grantor by whom the deed was executed." Of course, that is sound.

Now, they quote approving this from an Illinois case: "The whole object of the recording acts is to protect subsequent purchasers and incumbrances against previous deeds, mortgages, etc., which are not recorded; and to deprive the holder of the prior unregistered conveyance or mortgage of the right which his priority would have given him at the common law. The recording of a deed or mortgage, therefore, is constructive notice only to those who have subsequently acquired some interest or right in the property under the grantor or mortgagor." Then the Court says: "The decisions of our Court above cited establish a rule of property, and we need not stop to inquire whether they are correct or not."

I am telling you it is time to inquire whether they are correct or not. I have been in the eastern money markets, with the idea, and with the purpose, and the endeavor to dispose of Texas land notes, and a man need not think that the attorneys of these great insurance companies that lend their money all over these United States are not aware of these decisions. They are, and they construe them, and they tell me frankly that in view of such decisions no man can be safe, and I can not say that they are wrong. Now let us see what the Supreme Court says about this: "The effect of the rule is to hold that practically Article 4652 adds nothing to the law as it previously existed."

Why doesn't it? Why did the Legislature pass Article 4652? If we are going to be governed simply by the common law, what did they put Article 4652 in the statutes for? They say further: "And in determining the question before us, we are brought back to the construction of Article 4640," which is the statute relating to innocent purchasers, and not the statute with respect to notice. The Court says: "As to the matter in hand, the substance of that article is to declare a deed not duly recorded void as against subsequent purchasers for value without notice; and the question arises, what is meant by subsequent purchasers? Do the words mean all purchasers who purchase the land after the deed is recorded, or only those who are subsequent in the chain of title?" Now, notice this language: "If a grantor conveys the same property twice and the second grantee puts his deed upon

record, is it notice to one who subsequently purchases from the first grantee? We think not."

Now, just think of such a doctrine. Let us apply it. If Stewart conveys property twice, first to Duncan, and second to Judge Reese, and Judge Reese puts his deed upon record, is the record of the deed from Stewart to Reese notice to Judge Townes, who subsequently purchased from Duncan? "We think not." Isn't that a fine how do you do? Judge Reese bought that land from me, and he became an innocent purchaser, and it was his land, but I had previously sold it to Mr. Duncan, and he had not recorded the deed. As between Judge Reese and Duncan, certainly Reese would hold the property, but this decision says that though Judge Reese can hold that property as against Duncan, though Duncan's deed be not of record, and Judge Reese's deed be of record, if Duncan sells to Judge Townes he (Townes) is not charged with notice of the deed to Reese, and Townes takes the property away from Reese.

That illustrates the doctrine, and that is what this says, and it is the only construction I can get out of it. "The record is not notice to the first grantee (that is, to Duncan), for he is a prior purchaser. Nor do we think it was intended to be notice to anyone who should purchase from him." You can not get away from what that says. I wish we could, but I can not see any way out of it. "In other words, we think the subsequent purchasers who are meant are only those the origin of whose title is subsequent to the title of the grantee in the recorded deed."

In other words, the deed from me to Judge Reese is only notice to somebody of a sale made afterwards, and is not notice if I had sold it prior to that to Judge Duncan. That is the plain English of this decision.

I skip a large part of the decision, but they go on further: "When one takes a conveyance from another who holds under the first deed from his grantor (that is, where Judge Townes takes a deed from Duncan, who holds under the first deed from Stewart), such purchaser (that is, Townes), is not bound to look further for a subsequent deed from that grantor (that is,

from Stewart to Reese), for the reason that such deed is out of the chain of title under which he buys."

Now, when I first noticed that decision alone I did not fancy it much, but I thought probably I was wrong and no court would ever follow it again, but I was mistaken about that. The Court of Civil Appeals, in the 70th Southwestern, page 222, does follow it, and it took a man's land away from him, when the appellee really owned the land. He bought and paid for it, and put the deed on record, and it was his. He owned it, and he paid taxes on it for years, and then they took it away from him. In other words, they admit in this opinion, in a decision by Judge Templeton, the fact that Arnold acquired the title to the land in controversy by virtue of the deeds made to him is beyond question. They concede Arnold owned the property. He had bought it and paid for it, and his deeds had been of record for thirteen years, when Ferguson came along and bought the heirs' part. They say: "The trial court denied a recovery to his heirs solely on the ground that the appellees are entitled to be protected as innocent purchasers. The questions presented are: (1) Was the registration of the deed from Thomas to Arnold in Navarro county a legal registration? And (2) if the said deed was duly recorded, did it constitute notice to the purchasers from Wade's heirs of the claim of Arnold? It is unnecessary for us to decide the first question, and for the purposes of this case we will accept the contention of appellants, and assume that the deed was properly registered, although only an insignificant portion of the land conveyed by the deed was situated in the county of registration. On the second question the trial court found the law as follows: 'The defendants are \* \* \* not held to notice of title in Arnold by the record of the deed of Thomas to Arnold, because Thomas had before time conveyed all his title to McCown and Wade.' On the authority of *White v. McGregor* (that is the case I read to you awhile ago), this holding must be approved. In that case Crum conveyed a tract of land," and then they go on and discuss the case, and then say: "So, in this case, appellees, when they bought from the heirs of Wade, were not required to examine the records for any deed which may have been made by Thomas subsequent to the execu-

tion of his deed to Wade, and were not charged with implied notice of Arnold's claim by the record of the deed from Thomas to Arnold. That deed, having been made subsequent to the deed to Wade, was not in the chain of title of a purchaser from Wade, and such purchaser would not be affected with notice by the registration thereof. But even if it be conceded that the purchasers from Wade were bound to take notice of the record of the deed from Thomas to Arnold, it does not follow that they were not innocent purchasers. That is still more monstrous doctrine. "It does not follow that they were not innocent purchasers."

In other words, they say this: If I had sold a piece of property to Judge Reese, and then sold it subsequently to Mr. Duncan, and Judge Reese afterwards sold it to Judge Townes, and Judge Townes actually went to the record, or knew, or had been informed, or in some way had learned, of the deed from me to Judge Duncan, still they say that would not charge him with notice.

I do not know how they ever reached that conclusion, but here is what they say: "But even if it be conceded that the purchasers from Wade were bound to take notice of the record of the deed from Thomas to Arnold, it does not follow that they were not innocent purchasers. On the face of the records title was in Wade; the deed to him antedating the deed to Arnold." In other words, a man can go and see both deeds on record, and take his choice. "The facts which made Arnold's title superior to that of Wade were not apparent of record. If appellees had actually known of the deed to Arnold, such knowledge might be held sufficient to put them upon inquiry as to the facts which invalidated Wade's apparent title. But they had no actual knowledge of Arnold's deed. If it should be held that the law presumed that they had notice of the deed, it would not be further presumed that they had notice of the facts which made Arnold's title superior to Wade's title, for the reason that one presumption can not be built upon another. *White v. McGregor*, supra."

Now, I take it that these decisions construing Article 4652 are based on a rule that was obsolete before I was born. I believe that the Legislature in enacting Article 4652 meant what

they said, that the record of a deed is notice to any one who subsequently deals with that land, that is where there is a complete chain of title of record. What else does it mean? I believe this further: That the record of a deed, supported by a chain of title back to the sovereignty of the soil, is just as good notice, and should be held to be as good notice, under our statute—I do not mean under the decisions of some other State, but I mean under the statutes of the State of Texas—as though the last grantor in that chain of title was actually in possession of the property.

There are two kinds of notice, actual notice and constructive notice. I may buy a piece of land in La Grange from Mr. Duncan here, but if he has previously sold it, and his grantee is in possession, though his deed is not recorded, I have constructive notice of that conveyance. I submit, though, that is no more and is no stronger than the notice that Article 4652 was intended to give. If you will go back to Pomeroy and see the reason of the rule, you will laugh. It assumes that a man who examines a title goes and takes an index and traces it back. Well, that has been stopped long years ago. In fact, years ago it was held that the failure of the clerk to index a deed that is spread upon the record does not affect the validity of the deed.

I believe that this Bar Association should do something to correct this present condition. The idea of saying that this entire league of land upon which this city is situated which was conveyed by the man that owned it before the patent issued, passed no title to those who purchased from him, as against some land pirate who should now find the heirs of that patentee and get a deed, is preposterous. It should never have been enounced as the law. As laid down in *Breen v. Morehead* you might get around it, if it did not go back and rely on *Tiffany on Real Property*, and on *Pomeroy*, but when you go back to what they there approve, you find a doctrine laid down that will destroy many titles in this State. I do not believe it will ever be followed again, if the question is ever squarely presented and properly worked out, but it is a dangerous situation, and I do not know what will happen, because some other court may follow that, just as Judge Templeton in the case of *Fullenwider*

v. Ferguson followed the doctrine laid down in *White v. McGregor*.

Neither do I believe it is safe to leave the statute where the Supreme Court now leaves it. They say that Article 4652 adds nothing to the law and leaves the law as though Article 4652 did not exist. I believe this Bar Association should appoint a committee to go to the next Legislature and have them re-enact Article 4652, and then add to it an expression that the record of a deed is notice whether the man had a title at that date, or whether he did not, and that a complete chain of title of record is notice to anybody who subsequently deals in that property.

For illustration, I made a deed to that lot right across the street from here yesterday to a corporation. They recorded that deed yesterday. It is their property. Now, to say that last week I made a deed to Judge Duncan, who could not take the property away from the corporation because they are innocent purchasers but that Judge Duncan could go and sell the property to Judge Townes next week, and that Judge Townes would not have notice of the deed from me to the corporation recorded yesterday, because forsooth a week before I deeded to Judge Duncan, is dangerous, and the laws of this State should not be left in that situation. I do believe that any one who will study these decisions out must reach the conclusion I have reached, that the Courts mean what they say. If they do not, I am like Pat about the dog, I don't know anything about the rule, and if I know it, the dog don't. I would like to see this Association appoint a committee to go to the next Legislature and try to have Article 4652 put back on the books.

JUDGE BROWN: Mr. President, I feel like I am called upon to say something about this matter.

THE PRESIDENT: We will be glad to hear you, Judge.

JUDGE BROWN: I think a great deal of Mr. Stewart, but if these decisions are what he says they are, then the best way to get rid of them is to elect a new Court. With all due respect to him, he does not construe these decisions right, and I am going to give you a statement about it. *White v. McGregor* was this kind of a case. There was a man who owned a piece of property,



and he was in debt. He intended to defraud his creditors; that is, he was going to sell the property and put the proceeds away where the creditors could not get it. So he sold it to his mother. His mother paid the cash for it, and the Court found that she was an innocent purchaser and did not know anything about his fraudulent purposes. She put her deed on record that same day that she bought. More than a year, I believe two years after that, a man who had a claim against her vendor, her son—it was before the next sale—brought a suit in the justice court, and got a judgment against him. He then levied upon this land that had been sold to the man's mother, and the judgment was rendered after the sale was made to her, and after her deed was recorded. Then he got his judgment and sold the land, and it was bought by a party who claimed it, and the Court said, and I stand by it, that the title passed out of the original owner, who had conveyed it to his mother, and that the subsequent sale passed no title to the purchaser. Is there any doubt about that? That is just the case.

The proposition that they made was that because of the fact that this land was levied upon by this execution, and the land was sold by reason of the fact that the party had made a fraudulent sale, that the party who purchased after that had to take notice of the deed under the constable's sale, and of the fact that it was fraudulent, and he did not know a thing on earth about it, and neither did the mother. Those were the facts in the case, and there is no question about it. It is just simply a fact that when he sold it, and the title passed out of him, and afterwards, after it passed out of him, and another party bought it under an execution sale, that party got no title, and that the deed that the constable made was no notice to any other party that it was a fraudulent sale, who bought after that.

MR. STEWART: I do not know whether you intended to make the statement I understand you to make or not, but either you misapprehend the case or I do. The fact is that Crum made a deed to his mother. She was not an innocent purchaser. Nobody claimed that.

JUDGE BROWN: Yes, she was. The opinion said so, clearly and plainly, that she did not have any notice of the fact that

he was trying to defraud his creditors; that his mother knew nothing about the fraudulent purpose, and paid cash for it. That is what Judge Gaines says in that opinion—paid cash for it. My friend has just overlooked it. And then Judge Gaines says that after the title had gone out of this man, and he conveyed it to his mother, and she had conveyed it to another party, that when she conveyed it to another party that the deed on record from the constable was no notice to her vendee with regard to this matter, because the title had passed out of Crum before the execution sale occurred. Now, that is the rule that is laid down. It is this: If A sells a piece of property to B, and B puts his deed upon record and becomes an innocent purchaser, whether he does or not, whenever it passes out of him, and there is a subsequent sale, they are not required to take notice of something that is subsequent to the sale; that is, where a man sells a piece of property and passes the title out of him, the party who buys from him after that must look to see if there is anything on record from him to somebody else, and if he has sold it before that, and the deed is on record, showing that the title is out of him, and then his vendee sells, and the same vendee sells to another party and he puts the deed on record—that is, if A sells to B, and B sells to C, and then A sells to D, here is the deed on record from A to B that shows the title out of him, and when C comes to buy it and finds the record title on down from A to B, he is not required to look back and see if subsequent to that time, after A passed the title out of him, that he has made another deed to somebody else. That is the case. I have been talking with Brother Stewart about this matter, but I could not get him to understand it the way I do.

MR. STEWART: Before you proceed any further I want to call your attention to this, because I do not want to make any mistake about that expression, right here:

“According to the findings of the Court of Civil Appeals, the conveyance by John Crum to Mrs. Dickerson, his mother, was made with the intent to defraud his creditors. On the other hand, they found that when Mrs. White purchased she paid value for the land without actual notice of any adverse claim. The deed to Mrs. Dickerson recited a consideration of \$200, and

that it was paid. In determining the superiority of the respective titles, two questions present themselves: (1) Was the registration of the deed of the sheriff to Evans notice to Mrs. White, the plaintiff, of the existence of such deed?"

JUDGE BROWN: The Court says not, and I think it is right. That is the case. Now, the other case, in the 70th Southwestern, was a case of this kind: Land was granted to a man by the name of Thomas. Thomas conveyed one-half of it to two parties, a man by the name of McCown, and a man by the name of Wade. They had their deeds on record. After that Wade sold his part of it to another man, named Arnold. The deed from Thomas to Wade was on record. Arnold and McCown went to Thomas and surrendered the deeds from Thomas to McCown and Wade, leaving the record, however, and took a deed from Thomas to Arnold. Of course, as to these parties, between Wade and Arnold, if they had had a show at it that way, Arnold would have had the title, because he would have been estopped after surrendering his deed, but here was the record. The men who bought from Wade's heirs did not know anything about the surrender of the deeds which had been made in the first instance by Thomas, and which had been surrendered and taken up and another deed made. Instead of the deed to Wade a deed to Arnold was made and put on record, dating it subsequently to the date of the deed to Wade. Now, when a man comes to look at that to trace the title, he finds that Thomas is the grantee. He finds the deed on record to Wade. He does not find any deed on record from Wade to Arnold, because he surrendered the deed from Thomas to Wade and Arnold took a deed from Thomas, so that Arnold had no showing of a chain of title back to the original grantee. The Court held, and I think correctly, that under those circumstances, where the record showed a title chain still in the heirs of Wade, the land was the property of Wade on the record, and so far as that showed, and his heirs had a right to sell it, and they sold it. Arnold did get the title; he got an equitable title, and ought to have had the land, but when he surrendered his deed he went back and broke his connection with the original grantor, and he was not then in the line of the chain of title, and his record was not notice. Now, that is the law of the case, and he lost it.

THE PRESIDENT: The discussion has been of considerable entertainment, and I hope some progress will be made in understanding it, but we can not go further into it because our program must be carried out, and we have passed several very important committee reports. It is now five o'clock, and if it is the intention of the Association to complete the work today as mapped out by the Board of Directors, we must cut the argument and discussion short. So far as the chair is concerned, we are willing to continue over until tomorrow. We have just about one hour's working time today, and you must bear that in mind as to your discussions upon reports and papers presented. I will now call for the report of the Committee on Jurisprudence and Law Reform. Mr. William H. Burges is chairman, and Mr. Hawkins has the report, as I understand it.

MR. BURGES: The situation is this: We have never been able to have a meeting of that committee. I will take the responsibility for that. I was so far away from everybody else on the committee that it was impossible to bring about a meeting, and there is no report from the committee. Some weeks ago I met Mr. Hawkins in Austin, and told him at the time that my court engagements were such that it looked like I would not be able to be at this meeting, but that if he could get a report from the committee I thought it would be well for him to do so. My information is that Mr. Hawkins himself has not been able to get the committee together, but he has done some work in the drafting of a report which was to have been considered by the committee if a meeting could have been had. As that meeting could not be had there is no report from the committee, but Mr. Hawkins has prepared a tentative report of the committee, which we will be glad to submit, as I understand, and the Association will be glad to hear, no doubt, but there is no formal report, for the reason, as I have stated, that we were unable to get a meeting. It is work Mr. Hawkins has done, and I am satisfied he has done it well, and I, therefore, suggest that the Association hear from Mr. Hawkins as to any paper he has prepared.

THE PRESIDENT: We will be glad to hear from Mr. Hawkins.

MR. HAWKINS: Mr. President and gentlemen of the Association, the statement made by the chairman is correct. I met him

here yesterday afternoon, and he said he had not yet been able to make a report, but he had been able to get away from his San Angelo case, which he thought would keep him from this meeting, and he would like me to prepare something, and would go over it with me later in the afternoon, if he could get time from another engagement. I had not heard the speech of your President, because I was on a belated train, and did not get in until about one o'clock, and therefore did not know just what ground he had covered in his address. That was before the report of your special committee of nine, appointed under the resolution at Waco. I have had no conference with any member of that committee and did not know just what they were going to report. So, in order that there might be some report from our committee, I stayed at my room, instead of going on the boat ride, and prepared something in the nature of a report. I think possibly it has some germs of thought in it that may be helpful to you, and without meaning to intrude upon you at all, I would be glad to submit it to you for whatever it may be worth. In that connection I want to say that I am glad, since I wrote it, to find it comes so nearly in line with the suggestions contained in the report of the special committee of nine, headed by our distinguished Chief Justice, and composed of distinguished lawyers, whose views are entitled to recognition. And in further preface, I want to call your attention to this fact: The report which I have drawn, while it covers the same ground, perhaps, as to a judicial commission, goes further and suggests that they be given broader liberty, broader scope of authority, and that instead of being appointed by the Governor alone, they be appointed by the Governor by and with the consent and advice of both houses of the Legislature, given before the appointments become effective. And, further, I have embodied in the report a suggestion which is not contained in the special committee report, to the effect that you request the Democratic State Convention to request the Legislature to create a judicial commission in accordance with the suggestion. With this prefatory statement, I beg your indulgence while I read the report.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW  
REFORM.

GALVESTON, TEXAS, July 2, 1912.

*To the President and Members of the Texas State Bar Association:*

Believing that you are entitled to some report from each of your committees, however few of its members may be in attendance upon your session, the undersigned, as a member of your regular committee on Jurisprudence and Law Reform begs to report as follows:

For a full report covering the field assigned by our By-Laws to this committee, we have depended mainly upon your special committee on Judicial Reform, which was appointed pursuant to a resolution which you adopted just a year ago at Waco. Besides, the demands upon our time have been such that we have not been able to give to our subject the study which it demands. However, I beg to submit for your consideration the following, in outline.

While the existing judicial system of this State, including rules of procedure, reflects much of both experience and wisdom and embodies much that is admirable in both theory and practice, perhaps no laymen, and certainly no lawyers, will deny that its practical operation is not by any means what it ought to be, or that there is abundant room for great improvement in our court procedure, in both criminal and civil cases, in the trial and also in the appellate courts.

This great State, with a present population of approximately 5,000,000, is moving forward by leaps and bounds in the race of material development and prosperity, and the possibilities which now confront, and the responsibilities which will in the very near future rest upon her people, and especially upon her Bench and Bar, are too varied and too weighty to be here enumerated. The material and business interests of this great Commonwealth must be protected and conserved and private rights must be upheld and enforced and public justice must be administered, all by and through the simplest and most efficient, and consequently the grandest system of courts and laws or rules of court procedure ever known among men.

The accomplishment of that beneficent result is at once the principal reason for the existence, and the highest duty, of the Texas Bar Association.

But how shall that end be best and most certainly and most quickly attained?

Lord Coke's favorite aphorism was this: "Blessed be not the complaining tongue, but blessed be the amending hand."

In the very nature of things it would be presumptuous and inopportune for me to here attempt to fully answer my own foregoing query; but I venture a brief reply, both negatively and affirmatively, thus:

First. We must not be shackled by too great a reverence for the decisions of even great judges who have gone on before—those “dead but sceptered sovereigns who rule our spirits from their urns.” We must have due regard for, but must not be too subservient to, precedent.

Law is a progressive science, and in all its departments and in all its forms should ever adapt itself to changing conditions in the affairs of men and to the expanding necessities of an advancing civilization.

Second. If from the experiences gained by the Bench and Bar of this State under our existing judicial system, or any previously in force in Texas, or by a careful and comprehensive study of judicial systems in operation in sister states, or elsewhere, any better system of trial or of appellate courts, or of both, can be devised or found, we Texans should not hesitate to adopt it, too, or, if necessary, to substitute it for our own.

I refer to this feature with diffidence, and in a merely tentative way, because I am fully conscious of the grave difficulties in the way of devising or finding and of even installing a better system of courts. But we should look that issue squarely in the face, and meet it like men, upon its merits.

Third. We must make provisions whereby the ordinary criminal or civil case may, and under normal conditions will, be tried promptly, and, even in the event of an appeal to the highest State court to which it may be carried, be finally decided and disposed of within a year, or less, from the original filing of such case in the trial court.

The business interests of the country and justice alike demand that this estimated period of time shall be shortened as much as may be found reasonably possible.

Fourth. We must simplify, as much as possible, the rules of procedure and practice in all of our trial and appellate courts. Especially must we simplify the rules relative to appeals in civil and criminal cases, in order that a greater proportion of the work of our appellate courts can and will be devoted to the merits of the case rather than to technicalities relating to the time or manner or form of the appeal and not affecting the merits of the issues involved.

We must abandon out-of-date and musty rules of procedure which stifle legitimate business and clog the wheels of justice. We must abolish many mere technicalities which do not protect or preserve substantial constitutional or statutory rights or promote justice.

Fifth. We must have a judiciary commission, of say five members, selected solely because of their qualifications and fitness for the great task before them, who shall stand charged by law with the duty of devising, compiling, adapting to our requirements, and presenting to the Legislature for its action thereon, and for reference by it to the people for ratification through a constitutional amendment, if any be necessary, such a complete system of courts and laws and rules of

procedure and practice. That commission should be appointed by the Governor, by and with the advice and consent of both houses of the Legislature, given by a majority vote of each body, before such appointments become effective. Its personnel should be such as to command the respect and confidence of the people, the press, the Bar and the courts of Texas. Its constituent members should be, indeed,

"Tall men, sun-crowned and who live above the fog "

In public duty and in private thinking."

They should be paid very liberal salaries. They should be supplied with ample funds with which to prosecute their work in their own way. Instead of being restricted, as certain of our commissions on revision have unfortunately been, to mere compilation of existing laws, they should be permitted to do their work as to them may seem best. And they should be allowed ample time in which to produce and present, for approval or rejection, a perfected system of courts and of laws and rules of procedure and practice which shall carry forward and embody the best of our existing system and the best obtainable from all other sources; a system which shall stand for all time pre-eminent in the annals of jurisprudence, alongside, but towering above both the "Corpus Juris Civilis" of Justinian and the "Code Napoleon."

Liberal pay and expenses of such a commission will aggregate perhaps less than one one-hundredth of the cost of one super-dreadnaught like the "Texas," or not more than one one-thirtieth of the estimated cost of our State Capitol. The time consumed in constructive work will probably be much less than that consumed in building either.

The "Corpus Juris Civilis," embracing the "Code," the "Pandects" and the "Institutes," and constituting what has been termed "the greatest contribution of the Latin intellect to civilization," and the principal portion of the "Code Napoleon," the pride of France and of a considerable portion of the rest of that continent, and of Louisiana, forming today the basis of her laws, were each produced and given to the world within but little more than one year.

But, regardless of the money or the time required, the creation of such a judicial commission is an obvious and imperative public necessity. Its labors, properly performed, will be, directly, of incalculable value, and will incidentally bring into Texas probably not less than \$5,000,000 of outside capital annually, for the following decade, and will bless her people and enrich mankind forever. Such a system of courts and laws would put "Texas" upon the lips of the world, and would make the name synonymous with enlightened progress, justice and prosperity.

I respectfully suggest that this Association should request the next Legislature to create and equip such a judicial commission. That request will doubtless be granted. In the unlikely event of its denial, the people of Texas should, in my humble judgment, call and hold, without unnecessary delay, a constitutional convention and thereby



create, man and equip such a commission, and put it to work, forthwith.

Nothing must or shall prevent the early and conservative accomplishment of judicial reform in Texas. Meanwhile, and pending the labors and report of that commission there will be no good reason why the Legislature may not, by appropriate legislation, extend to all the courts and to the people great relief in line with such wise suggestions as have been made through the press and otherwise, and well considered requests from this Association.

I hope and believe it will do so. I also respectfully suggest that the next Democratic State Convention be requested by you to incorporate in its platform a request to the Legislature for the creation of such a judicial commission.

Respectfully,

WM. E. HAWKINS.

THE PRESIDENT: You have heard the report. What shall we do with it?

MR. BURGESS: I move that the paper be received and filed.

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The motion was duly seconded and unanimously adopted.

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MR. FRANK C. JONES: It is getting very late in the afternoon, and tomorrow is the Fourth of July, anyhow, and nobody can work—in fact, nobody wants to work—at home, and we have a banquet on this evening, and it is almost time to go in the surf, and in addition to that there is a camera man here who wants to take a picture of this handsome aggregation of gentlemen, and the sun will soon go down so that he can not get it. I, therefore, move that we recess until ten o'clock tomorrow morning, and have the election of officers and other committee reports at that time. This crowd is tired of working any more today. (Applause.)

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The motion was duly seconded, and unanimously adopted, and the meeting stood adjourned until ten o'clock, a. m., July 4, 1912.

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JULY 4, 1912.

THE PRESIDENT: The convention will come to order.

THE PRESIDENT: We will now have the report of the committee on Legal Education and Admission to the Bar, of which Judge McLaurin is chairman. (Applause.)

## REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

*To the Hon. R. E. L. Saner, President of the Texas Bar Association:*

Your Committee on Legal Education and Admission to the Bar begs leave to report as follows:

In Art. VI, Sec. 3, of the By-Laws of the Texas Bar Association it is provided that "It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means of promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the Bar, and the best means of accomplishing that object." A compliance with this demand of the By-Laws requires that a report of this committee shall embrace at least two matters: First, suitable means of promoting and facilitating the study of the law, and second, the standard of qualifications for admission to the Bar, and the best means of accomplishing that object.

## FIRST—AS TO THE STUDY OF THE LAW.

Applicants for license to practice law, other than immigrant attorneys, may now pursue the study of the law either as students in the law department in the State University, or privately, or in some lawyer's office, or in some other law school. If the applicant is to come to the Bar through the University law school, his diploma as a graduate from that law school will entitle him to license. If the applicant be not a graduate from the University law school, then he is granted license by a board of examiners appointed by one of our Courts of Civil Appeals, upon an examination covering his proficiency in those subjects embraced in that course of study which our Supreme Court, as required by statute, has prescribed as a condition to admission to the Bar.

There has been in the past few years a gratifying advance in legal education in the State of Texas, both as required in the State law school, and in the study of the law under the course of study and regulations governing admission to the Bar prescribed by the Supreme Court in pursuance of an act of our Legislature approved March 19, 1903.

## THE UNIVERSITY LAW SCHOOL.

In the report of this committee, in July, 1910, will be found a statement relative to progress made in the law department of the University of Texas in legal education, and relative to the requirements in that school of students there pursuing the study of the law. That statement was furnished by the dean of the law department of the University of

Texas, and for the present use of this Association, and for a convenient and ready reference hereafter to this statement, we herewith set out again this statement of the dean, with such changes, since its former printing in the report of this committee, as have been made in the requirements of the University law school.

The statement is as follows, the changes from its original reading being here printed in italics:

"The Law Department of the University of Texas was opened in the fall of 1883. It had a faculty of two superb teachers, Judge Roberts and Judge Gould. The entrance requirements were declared to be the equivalent of a high school education. This was at that time a very indefinite term, and the tests applied as to compliance with this requirement were not rigid.

"The course covered two years. Each class had six meetings a week of one and one-half hours each, giving an aggregate of class-room work (not including moot court) of nine hours a week. The moot court covered two hours a week.

"In a short time the advisability of providing for two classes of students became apparent and they were divided into regular students, candidates for the LL. B. degree, and special students, not candidates for degree.

"The entrance requirements for regular students were raised more rapidly than for specials, but there has been a gradual increase in each until at this time the requirements for regular students are the fourteen academic units necessary to enter the College of Arts (these are several units above the courses in the average high school of the State) and five additional academic courses.

"The faculty has been increased until there are now *six* professors giving all their time to law subjects, and one who divides his time between the Law and Academic Departments. The course has been extended to three years and each of the classes is required to take twelve hours of class-room work in law subjects and attend three additional quiz periods each week.

"Besides this law work, there are now two and one-third academic courses required as part of the law course. These are civil government, political science, and argumentation. In addition to this, there are ninety hours of moot court work. A law degree, therefore, represents in class-room attendance in the University:

Regular law topics.....	1080 hours.
Law quizzes .....	270 hours.
Moot court .....	90 hours.
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Total law work.....	1440 hours.
Five academic entrance courses.....	450 hours.
Two and two-thirds academic courses after entrance .....	240 hours.
Total academic work.....	690 hours.
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Grand total .....	2130 hours.

"Some years ago, in order to encourage systematic work and keep exact records of the work of each student, the Department adopted the plan of having three written quizzes each week in each class, and in order to have these quizzes conducted properly and the papers properly and promptly graded, the Regents provide *four* quizmasters, who do this work. Absence from quiz without excuse counts zero, and two unexcused absences bar the student from examination. To be permitted to take the examination in any subject, the quiz average in that subject must be as high as eighty out of a possible hundred. To pass an examination, the same grade is required.

"There are about twenty-six subjects now in the course; in each of three of these there are two examinations given, so that a student who gets a law degree has been subjected to two hundred and ninety-nine written tests, two hundred and seventy of them as the work progressed and twenty-nine in final examinations.

"Special students are still received. They are, however, required to be twenty-three years of age and to have fair education, about equivalent to a first-grade teacher's certificate. By making up academic deficiencies and doing the regular law work, special students may become candidates for degrees.

"Whether the men who graduate from the Department are capable of following the profession they have chosen, the Bench and Bar of the State can judge. The foregoing is a brief outline of the processes to which they are subjected in the making.

"This advance in the work of the University is in keeping with modern law school movements. Ten years ago about thirty-six of the better law schools of the United States formed "The Association of American Law Schools." The purpose was to advance legal education and promote the methods of operating law schools. The organization has continued in successful operation and now comprises more than one-third of the law schools of the Union, all of them of high grade.

"The University of Texas has been a member of the Association for some years and has contributed its part to this success. No schools are admitted into this Association which do not require a full high-school course for admission and do not have a three-year course of at least thirty weeks of ten hours a week law work each year.

"At its last session it resolved that all its members should require not only a three-years course, but that three years should be passed in taking the course, two years of which must be in an approved law school. The statistics of the session for 1908 show that there were then one hundred and eight schools in the United States. Our Department was eighth in number of pupils. That the Department stands well with the other law schools is shown by the fact that credit for work done is given by every school in the United States which accepts credits from any school at all, and also by the fact that students holding law degrees from the Department can use them for obtaining

a master's degree in every school in which the degree of master of laws is conferred."

LEGAL EDUCATION OTHER THAN IN THE UNIVERSITY LAW SCHOOL.

As was said in the report of this committee in July, 1910, so we repeat now, that with reference to the quality of legal education indicated by the examinations before the several boards of legal examiners of the State, it should be said that here, also, we find a great improvement over the method of oral examinations in vogue prior to the adoption of the present law providing for such boards. However the present method is fraught with certain defects which we think should be corrected. The following figures, kindly furnished by the clerks of the several Courts of Civil Appeals, show the number of applicants for license before the boards of legal examiners of these several courts respectively, with the number of licenses granted and the number of rejections by the several boards for the time beginning April, 1910, and ending May, 1912.

Supreme Judicial District for the State.	No. of Applicants.	No. of Rejections.	No. of Licenses.
First District, Galveston.....	74	13	61
Second District, Fort Worth....	47	18	29
Third District, Austin.....	....	....	....
Fourth District, San Antonio....	61	3	58
Fifth District, Dallas.....	85	2	83
Sixth District, Texarkana.....	129	....	129
Seventh District, Amarillo.....	24	1	23
Eighth District, El Paso.....	5	....	5
Total .....	425	37	388

SECOND—THE STANDARD OF QUALIFICATIONS FOR ADMISSION TO THE BAR.  
AND THE BEST MEANS OF ACCOMPLISHING THAT OBJECT.

In the spirit if not the words of the report of this committee in 1910, we again say, that the foregoing figures, and we are quite sure also the observations of the profession with reference to the practical operation of the law with regard to examination, justify the conclusion, as we think, that we have not what could be termed a uniform system of examinations for candidates for the Bar. Certainly there should be a uniform system in this matter. Without reflection upon the ability or good faith of the constituents of the several boards of examiners, we think that such uniformity can not be secured even approximately when eight different boards, without consultation, are conducting examinations from time to time in different portions of

the State. It seems to us quite impracticable for the several boards to agree upon questions for examination or how a conference among the several boards themselves, even if practicable, would be of much value. We approve of that act of our Legislature passed in March, 1903, providing that our Supreme Court shall prescribe a course of study to be pursued and the subjects in which applicants for license to practice law shall be examined. The action of the Supreme Court, in pursuance of this act, in prescribing a course of study, has already given uniformity in the course of study, but we are still without a uniform system of examinations for candidates, in the course of study required. We think that the figures above given relative to the results before the several boards of examiners, plainly show that the standard of proficiency in the course of study prescribed by the Supreme Court is less with some of these boards than with others; we are informed, too, that applicants for license, believing that such differences exist in the requirements as to examination by the several boards, journey beyond the judicial district in which they reside and go long distances to remote places in the State in order that they may take an examination before some board which they hope and believe will be less exacting in the quality of examination than some other board in their own judicial district.

#### RECOMMENDATIONS.

To the end that there may be uniformity and certainty as to the requirements of all applicants for admission to the Bar, as well as in the course of study to be pursued, as in the examination to be given as a test of the applicant's proficiency in these studies, we recommend that this Association adopt a resolution urging our Legislature to so amend and add to the laws of this State, that there may be embraced in our statutes a demand for requirements substantially as follows, relative to all examinations of applicants for admission to the Bar:

1. That the eight boards of examiners now existing be abolished, and in place of them one central board of examiners be appointed by our Supreme Court.
2. That the Central Board of Examiners shall consist of three members, no two of whom shall be selected from the same supreme judicial district.
3. That the Central Board of Examiners shall give all examinations in writing as hereinafter provided, and shall hold its sessions for preparing and selecting questions for the examination, and for reading and grading the examination papers in the city of Austin, unless for reasons satisfactory to themselves they conclude to hold sessions elsewhere.
4. That the examinations of applicants shall be held but once each

year on the first Tuesday after the first Monday in the Month of July, and continue as long as may be necessary.

5. That the Central Board shall prepare all questions for examinations and transmit them in sealed packages at its own expense prepaid to the clerks of the several Courts of Civil Appeals.

6. That the examinations shall be given at the places where the several Courts of Civil Appeals are located, and all of them on the same dates in the several judicial districts.

7. That the clerks of the several Courts of Civil Appeals, severally, shall cause to assemble at the same time and in the same room, within his supreme judicial district, all the applicants for license in his judicial district. The clerk of the Court of Civil Appeals or some one designated by his Court of Civil Appeals shall be personally present during all the time of the examinations to see that all the requirements of the law and of the Central Board of Examiners are complied with. He shall furnish each applicant with a copy of all the questions, but in doing so he will see that the applicant shall not have the questions relative to more than one subject for examination at one and the same time and that the applicant shall have had the time allotted to each subject to finish his examination upon that subject before he receives the questions for the next subject. The clerk shall also see that all applicants are furnished with the examination questions relating to the same subject at the same hour of the same day, that the time for writing the answers to such questions shall not exceed the time allotted to that subject by the Central Board, and that no applicant shall receive or have access to the questions upon any other subject until the time for examination in the next preceding subject shall have elapsed, at the conclusion of which time, but not before the hour appointed for the next succeeding subject, all applicants shall be furnished at the same time with a copy of the questions upon the next succeeding subject, and this method shall be pursued relative to all subjects from the first through the last.

8. That upon the conclusion of his examination of each subject, or at the expiration of the time given by the Central Board for the examination in that subject, the applicant, whether he shall have finished his examination in that subject or not, shall be held to have finished it and shall attach the questions on that subject to the back of his examination paper, therein, and shall write and sign a pledge in these words: "I state upon my honor that in this examination my answers are based wholly upon such study of this subject as I gave it before the examination therein began, that I have neither given nor received any aid relative to this examination since it began, that I had no knowledge or information whatever as to the contents of the questions for this examination until they were handed me by the Clerk of the Court of Civil Appeals at the moment of the beginning of this examination, and that I have attached to the back of this paper

the questions upon which this examination is based, and have neither made nor retained any copy of such questions."

9. That the respective clerks of the Courts of Civil Appeals shall, immediately after the examination before him in the several subjects shall have been concluded, forward by express prepaid to the Central Board of Examiners the examination papers and questions attached of all the applicants for license and also all questions remaining in his hands not used by any applicant.

10. That the Central Board of Examiners shall prescribe the day on which and the order in which the several legal subjects, in which examinations are to be held, shall be given to the applicants for license, and the time to be allowed the applicants for preparing his answers to the questions on each subject and shall so adjust the time that no examination in any subject shall be taken in part on one day and the remainder on another day.

11. That each applicant for license shall apply in writing for examination to the Clerk of that Court of Civil Appeals in the district in which he resides, and shall so apply at least one month prior to the date set for that examination. The clerk shall, not less than three weeks prior to the day fixed for the examination before him, notify the Central Board of Examiners of the number of applications on file with him for this examination.

12. That each applicant for license shall, before taking the examination, deposit with that clerk of the Court of Civil Appeals by whom his examination is to be conducted, the sum of \$20.00 as an examination fee.

13. That for each day's attendance upon the examination of applicants for license the clerk of the Court of Civil Appeals or other party presiding at such examination shall receive as his total per diem for such attendance the sum of \$5.00 to be deducted by him from the aggregate sum of all the examination fees paid into his hands by the applicants for license. This per diem shall be \$5.00 whether the applicants be one or more.

14. That the clerk of the Court of Civil Appeals shall forthwith, after deducting the per diem or that of any other party acting in his place in attending the examinations and charges for transporting the examination papers, transmit by express prepaid the balance of all the examination fees to the State Treasurer, and the examination papers and questions to the Central Board of Examiners at the city of Austin, Texas.

15. That each member of the Central Board of Examiners shall receive for his services annually upon this board the sum of \$500.00, to be paid him by the State in the month of August.

16. That any applicant for license to practice law may obtain a temporary permit in the manner provided for in the Revised Statutes of Texas, 1895, Art. 235, except that the license so procured shall au-



thorize the licensee to practice in all the courts until the date fixed for the next following examination for license to practice law to be given by the Central Board of Examiners, sixty days from which date the temporary license shall expire. Temporary license shall not be granted to the same person more than once; provided, if because of sickness or other cause beyond control of the applicant, he has not been able to take the first annual examination after temporary license is granted him, and this be satisfactorily shown to the Central Board of Examiners, that board may, in its discretion, allow the applicant to apply for permanent license at the next succeeding annual examination, and in such case his temporary license shall continue until sixty days after the time for such next succeeding annual examination.

17. Licensed attorneys from other states shall not be required to reside in any particular supreme judicial district, but may apply for license in any one of such districts. And may likewise be granted temporary license in any county of the State, under the terms and conditions as provided by Article 235 of the Revised Statutes of Texas in regard to other applicants for temporary license.

18. That the President of this Association for the ensuing year, shall, as soon as he can give the matter due consideration, appoint a committee of five to draft the above recommendations into a bill, and this committee of five shall be charged with the duty of securing, if possible, the passage of such bill by our Legislature.

LAUCH McLAURIN, Chairman.

JUDGE STREETMAN: I heard something said in the report about one annual meeting of the central board of examiners. Is it contemplated that licenses can only be issued at that one annual meeting?

JUDGE McLAURIN: The general license, that is to be good in all the Courts at all times, can only be issued once a year, but it is also provided that any man who wants a license in the meantime can have a temporary certificate, just as under our Revised Statutes.

JUDGE STREETMAN: I am in favor of the report, heartily. It seems to me, though, that more frequent occasions than once a year ought to be provided for obtaining a permanent license. I think the occasion should be not less than once every three months. I can imagine it might work a very great hardship on people coming from other States, or on young men who had just prepared themselves to be admitted to the Bar here, and had completed their preparation just after one of the annual meetings of the board, and had to wait approximately twelve months be-

fore the question could be finally determined for them whether they receive a permanent license or not. Unless there is some reason more imperative than I now think of, I shall move to amend that section of the recommendation by providing that the meeting of the central board and the issuance of the permanent license shall be not less than once every three months each year.

MR. DINSMORE: I have no doubt Judge McLaurin and other members of the Association would like to discuss this matter, and in order to open the question I move the adoption of the report and the appointment of a committee.

JUDGE STREETMAN: Then I move to amend—

MR. C. K. LEE: If you will hear me just a minute, Judge Streetman, I do not think you will make that motion. There is no question that in the last six or eight years we have made a very marked advance in the requirements for the admission to the Bar. The steps that have been taken have been good ones and have done a world of good. There is no lawyer who wants to keep any qualified man out of the profession, but we all want qualified men, and if you will analyze the figures Judge McLaurin submits the remarkable situation occurs to you at once that some of these examining boards over this State pass every man, and their percentage of men who fail is absolutely nothing. They pass practically everybody who comes to them. Our committee at Fort Worth is the most stringent of any, due in my judgment to one man over there who Judge Speer knows, and we all know, is a most efficient lawyer and a man of great capacity, and who takes a great interest in that matter. The men who are qualified pass, but the men who are not can not. There is another thing that has come up and made itself manifest in this connection. The examination papers have been preserved and have been passed around, and I know that young men who have stood these examinations have gotten copies of former examinations, not with the idea of preparing for just those questions, but with the idea of finding out what was going to be the character of the examination, and whether they get in the examination rooms those same questions we present to them, they, of course, pass high examinations. Now, I am going

to put this proposition to Judge Streetman, and there is no man in the State of Texas that I know of that I would rather see on that board of examiners than Judge Streetman. (Applause.) I will put the proposition to him and let him answer it. He won't serve on that board if he has got to get up a new set of questions every three months during the year. It is too much work, and you are not going to get qualified men, for the small sum of \$500 a year, to handle this thing right. The individual instance of a man who may want a license right now will work a hardship, perhaps, but you can not make laws on the basis of the individual instance, and if you are going to have a satisfactory Bar examination you have got to have it along the lines Judge McLaurin has outlined—one examination a year. Put that in the summer time, when the good lawyers of this State have a little time to give to it and to take care of the thing properly, and the small compensation of \$500 a year will be bare pay for the work they have to do—insignificant pay, I will say, if they do it right—and good lawyers are not going to fool with it if you have an examination every three months.

JUDGE STREETMAN: I don't know—I may not be insistent on the question of three months—but it does seem to me that the question is worthy of consideration as to whether we want to hold an examination more than only once a year. A young man prepares himself, finishes his course of study, and is ready then to stand an examination, and it may be then eleven months before the time when he can have an opportunity to stand it. He procures a temporary certificate and makes his arrangements, and it is a matter of importance to a young man beginning life; it is a crucial time in his life; he goes ahead for eleven months under a temporary certificate, and when he stands his examination he fails. It works a serious hardship on that young man. Again—I may be in error about this, but I think this examination is required both of original applicants and of practitioners from other States coming into this State.

MR. LEE: That is the law now.

JUDGE STREETMAN: A man wants to come to Texas to practice law, and he moves in, and he does not find out until he moves here that he has to stand an examination, as has hap-

pened in one or two instances within my knowledge, and he finds he has to wait eleven months. That man has to stake his prospect of practicing law on an event that is to happen eleven months after he gets here, or some considerable length of time. Now, I am not insistent upon the question of three months, but it does seem to me that an opportunity every twelve months is not frequent enough, and I make the motion to amend the report by making it every six months. Service on these boards is *pro bono publico* anyway, and the compensation is not attractive under any circumstances, and I think the competent lawyer who would serve when the examination is fixed for once a year would do it with equal cheerfulness when they are fixed for twice a year. I, therefore, move that that section of the report be amended so as to provide for semi-annual examinations.

MR. LEWIS BRYAN: I second Judge Streetman's amendment. I was on the board for this district, the first board under the law, some seven or eight years ago, and I always took a great interest in it, and I soon became convinced that there ought to be one board, and its headquarters should be in Austin. I have advocated it whenever the matter came up, and I think that is the most important point about the whole matter, so that we can have a uniform standard of admission, to have one board and one set of men pass upon it. If I understand it, the members of the board are not present at the Court of Appeals when the examination is held, but the clerk sees to it, and the board receive the papers and then meet and pass on them, and the idea of doing it every six months is all right.

MR. FRANKLIN: I think Mr. Lee is entirely right, and that the report of the committee should be adopted unamended. Personally I want to see the time arrive in Texas when we will really have no examinations by a board of lawyers at all, and when any young man who wants to enter the profession will enter the University of Texas. I feel that way because I think it is infinitely better for the young man. I think that the young man who goes out to practice law after having entered and graduated at the University, and gets the thorough training that he gets there, and is brought into association with the men with whom he associates there, has an advantage when

he undertakes to practice thereafter which can not be measured. The few months, or even years, of delay in qualifying a young man for admission to the Bar, he will find out afterwards have not been thrown away. When he enters the arena in the court room he will find that he is equal to many men who have been there for many years, because he will have been thoroughly grounded in the principles of the law, thoroughly trained in a university, having the benefit of what results from attrition of mind upon mind, and all that he really has to acquire is confidence in himself. But I realize that all young men can not go to the University, that there are those who can not go, and I refer to this matter of young men going to the University of Texas because it is a matter that I think about very strongly. I think about it as any man thinks who has never had the benefit of any education, and I believe that the public thought of a State is ultimately made through its universities, and that the young men who go to the University of this State are going to be and should be the ruling spirits in the destiny of the State hereafter. Now, there are some young men who have not the means to go, but they want to become lawyers. The young man who is going to make a lawyer out of himself whether he can go to the University or not is necessarily a man of nerve, and force, and spirit, and if he has an opportunity once a year to be examined for admission to the Bar, he is going to be willing to wait, and if he wants to obtain a temporary license in the meantime he is going to obtain it, because he believes and knows in himself that the temporary license will be made a permanent license when he is examined. No man who has the quality of success in him will so far overestimate himself as to undertake to apply for admission to the Bar unless he feels himself thoroughly qualified, and if he has once burned his ships behind him and taken out his temporary license, there will be very few, if any, instances, where that sort of a man fails.

JUDGE McLAURIN: I shall have no embarrassment whatever in urging the adoption of this report, because, while I have been honored with the chairmanship of this committee twice, once the year preceding the last and again this year, yet I do not claim that I am responsible for the suggestions in this report in any

large measure. It has not been presented heretofore exactly in this form, but the root was there, the thought was there, two years ago. On account of illness in my family I could not be present at that time, and while the report appears in my name I was not responsible for it, though I do very thoroughly endorse it. Again, last year, your committee, composed entirely of other men, practically recommended the same thing that was recommended in 1910. The members of those two committees, barring your speaker, I will not make any comment upon. Merely to mention their names would give credit before this Association to the character of the men. With the same exception, this year you have another strong committee. That committee recommends this report. It does not come from a school teacher alone. It has not been so long, however, since I left the Bar that I feel like a school teacher. In fact I feel very frequently as if I would like to go to the court house rather than to the school room. Now, I can appreciate the suggestions that have been made relative to men who can not or do not desire to go to a law school. You can not prevent a man from being a lawyer who desires to be and has the ability to be. A law school will not keep him from being a lawyer, nor will it make him a lawyer. He may comply with all the requirements in the law school, and yet not be fit, when he comes to the Bar, to maintain place there, and without ever having gone there, if he be a man of proper caliber to make him a lawyer, he will make it. It may take longer, but he will get there. Now, let us see whether or not there is fairness in this report, and I wish, first, to speak to the motion to amend the report. We were not unmindful of the fact that many a man might be prevented for some months from getting his license to practice law, if he only has the opportunity once in twelve months to do so, but we all know that a certificate to practice law has not been heretofore a difficult matter to procure. The new man generally applies to his District Judge in the county where he lives, and something of the quality of the man is known, and the District Judge is not disposed to be very exacting, and the members of the Bar, as I have observed from time to time, ask only a few questions. I have known men to go to the Bar upon the inquiry, "What is

law?" and that would be the only question. Now, I do not advocate that, of course, but I do mean to say that it will not be a very difficult thing for the young man to come to the Bar upon his certificate, which will bridge over the difficulty that is named by Judge Streetman until the next examination may come about. We have also undertaken to provide that there shall be no abuse of this certificate, for a man who has once received it may not receive it a second time. He must take the examination. Now, there is something wrong about this system of examination. I do not mean to make any attack at all on any one, nor do I think that there has been anything intentionally wrong with these examinations, but the boards of examiners are just like the balance of us lawyers. Some of us think one way about the matter and some another. But it is remarkable that out of forty-eight men applying at Fort Worth eighteen should be rejected. Are they such a miserable lot of stupid in the vicinity of Fort Worth that they can not pass an examination? That does not answer the question. It is not true. Out of seventy-seven applicants at Galveston thirteen were rejected. The same remark may be made there—a little more laxness at Galveston, possibly. Then at San Antonio only three were rejected out of sixty-one; at Dallas, two out of eighty-five; at Amarillo, one out of twenty-four; at El Paso no man was rejected out of five, and at Texarkana 129 men, evidently the brightest young men in the State, made application, and all passed. (Applause and laughter.) Now, I do not even know who constituted the board of examiners at Texarkana, and I purposely avoided finding out.

MR. BRYAN: Judge Franklin suggests that probably the 129th member came from Arkansas.

THE PRESIDENT: A good deal of good has come out of that State. (Laughter.)

MR. BRYAN: We have demonstrated that by our President.

JUDGE McLaurin: What has been said in this report is true of the year before. It is about the same percentage. Now, these lawyers upon this board have thought the matter over very carefully. Will somebody in the Legislature say that we are going to pay these men too much? Let us see about that. Sup-

pose 500 men should apply one year, at \$25.00 apiece. Where does the money go? Not to the board of examiners, but to the State Treasurer. The board of examiners in any event will only get the \$500 a year. Now, we may find some man who is entirely too busy to take it at that. A great many are. But we will find some good lawyers who have time in the summer, for this examination is to take place in the summer, to spend a few days, or a few weeks, or possibly a month, in preparing examinations and in examining the papers. We all know well enough that if any three of us were to get together to grade papers, and we were all to pass upon the same papers we would perhaps not give them the same grade, but we would not be far apart, and we could reconcile our differences. But when we have one board at Texarkana, and another at El Paso, some thousand miles apart, it is not likely they will get together and consult as to what the examination shall be, or how the grades shall be given. With three men, however, that thing can all be adjusted. This pay is a small sum, to be sure. It is no more than will be the labor value for examining at least 250 papers a year, on eight subjects, as prescribed by the Supreme Court of this State. Those of us who have had occasion to examine these papers know about the length of the paper, and multiplying it by eight you have an immense amount of reading to do. These men do not all use the same text books. We ought to recommend a change in the law in that respect. It is going to be a tremendous work, as these men know who have had occasion to examine the papers heretofore. There will be no objection, we think, in the Legislature to the appointment of these men, because the report recommends that no two of these men shall be from the same supreme judicial district. Austin is recommended as a central point, simply because it is true from point of fact. We have no choice about that, however. Now, we have thought this matter out very carefully. We know there might be an objection to such great detail in legislation as we have suggested here, but I may say, and I hope without hurting anybody's feelings, for I have no suspicion that there has been any bad faith in this matter, that I have heard it said that on a certain occasion, in a certain place in this State, the young



men assembled to have their examination. On the first day a bright young lawyer came along, who had been trained in some lawyer's office, and that is a mighty good place to train, and he got hold of one paper of questions, and in a little while he was done with it. The board of examiners, honest men, faithful men, good men, had put all the examination papers in a drawer in a table in the room, and had declared to the class: "Gentlemen, when you finish your first paper, here are the others," and that was the only restriction. This young fellow finished his paper, and he finished two or three more during that same day, and when he got ready to go home that night there was nothing to prevent him from taking all the balance of the papers that he wanted and distributing them around. Now, was he a rascal? I certainly would not approve his conduct, but I do not think a man ought to be forever condemned because he has been guilty of one indiscretion. Quite youthful he was, though he was twenty-one years old. Now, we have provided for these pledges, not that we suspect that every man who wants to be a lawyer will be a rascal, but with the idea that it is a good thing to pray always, "Lead us not into temptation." When the young man knows that he must not know anything about the examinations in advance, that he can receive no information about the examinations pending the examination, and that he can not impart any information to anybody else he will be just like all the balance of us—it will never occur to him to take any advantage. We think all these details belong to this matter, for the benefit of the State, and for the benefit of the men who are to take the examinations.

MR. DINSMORE: There seems to be no difference of opinion on the general recommendation of the committee. I would like to speak briefly to the amendment which Judge Streetman has offered. This is a matter that I am very much interested in, and have given some little attention and some little study to. The objection Judge Streetman makes is that some young fellow might come down here immediately after an examination had been held and have to wait a whole year to take the examination, and that would be some inconvenience to him, because he would not be fresh on his subjects as he was when he first came. I

think that the point that has been made by other gentlemen on the floor here is well taken on that proposition. If the man is thoroughly grounded in his subject he can, with a very brief review, go before the board a year later and make just as good a grade as he could have made at the time.

MR. LEE: If he can not remember it eleven months he is hardly safe.

MR. DINSMORE: No, he is not. I say that after having considered the matter and having had some little experience along those lines myself. There is one further objection to the twice a year examination in addition to those that have already been mentioned. I had some experience with examinations in the University of Texas some years ago, on both sides of the fence—both in taking them myself and later in grading the papers—and to people who have not had the work of grading the examination papers to do, it is a little bit hard to explain just how much work there is to it. I remember a set of 216 Blackstone papers I graded, final examination papers, that it took me about three months to finish. I was not giving my entire time to it, but I do not understand that it is contemplated that anybody is going to give their entire time to the grading of these papers. It is a matter that you feel in duty bound to give the utmost care and consideration to. The instance I speak of was only one subject. Now, with the vast number of subjects covering the whole field of the law, comprising a three years' course at the University, the work of grading those papers is immense. And as Mr. Lee has pointed out, while as suggested here the members of these boards should serve for patriotic reasons, at the same time I do not think they are going to be willing to give the time to it more than once a year after they find out what the work is—that is, to give the attention that should be given to it and have the papers graded with the care that they should be graded. There is one other thing I want to mention. This report sets out in some detail the manner of holding these examinations. I think that is important. I understand from information I have received from talking to various applicants that there has not been a very strict rule. Judge McLaurin stated one instance about that. We should keep these men away from temptation, if

you please. They are there, and they want to get their licenses, and it is a great temptation to them sometimes, and that ought to be removed, and these detail matters I think ought to be carefully included in the provisions. With those two objections to the amendment as proposed by Judge Streetman I want to stop. In the first place, if a young man knows enough about the law to get a certificate, he can with a very brief review successfully take the examination a year later; and, secondly, as has been mentioned by Mr. Lee, the amount of this work is such, and the necessity for care in its performance is so great, that good lawyers are not going to do it more than once a year.

MR. GEORGE KING: While not agreeing with the gentleman, I take it that practically all the members of this Association favor the general methods suggested by the report. I shall favor the amendment for these two reasons: I believe if an attorney who has been practicing ten or fifteen years in some other State wants to move to Texas he should not be required to practice under a temporary license for twelve months before he can procure a permanent license. It would work a hardship against an attorney from another State, who for some cause might desire to move to Texas, and he may have been as prominent in his profession at home as any member of this Association; he may have been engaged in the practice for ten or fifteen years, and to require that man, before admitting him to the profession in this State, to come to Texas and practice under a temporary license for twelve months, seems to me to be requiring just a little too much of him. Now, this report discloses that during the past twelve months there have been some 300 or 400—I wish you would give me the exact figures.

JUDGE McLaurin: For the two years beginning April, 1910, and coming down to May of this year, there were 428—for the two years.

MR. KING: That averaged 214 per year. Now, the report contemplates, in fact, it states, that but one temporary license can be issued. Now, suppose that out of that 214, taking it for granted there would only be that number apply each year, there are those to whom a temporary license has been issued for that year, and then when the central board meets some three or four,

or one, even, of that number is sick, or from some cause can not attend the meeting for that year. His temporary license has expired. Under the provisions of the report he can not practice for another twelve months, but is compelled to wait, even without a temporary license, for another year, before he can be admitted to the Bar. For those two reasons I think the amendment should be adopted. (Applause.)

JUDGE McLaurin: I am very much impressed with what the gentleman said in the latter part of his address. It might be that some man would be sick, and it is provided in the report that a man shall not have a temporary license twice. But if there be merit in this examination once a year for the reasons that have been stated here, may not his suggestion be covered, and yet leave the report practically as it stands, by something like this: That if any man shall show to the board that he was sick at the time, or otherwise prevented, in some such manner as the Legislature or the board of examiners will provide, from taking his general examination, then he may have another examination a few weeks later. I think that will meet the gentleman's idea and still leave the report practically as it stands.

MR. LEE: Judge McLaurin, I suggest you add to that the provision that "unless a man satisfies the central board that he was prevented from taking the permanent examination on account of sickness, or some other unavoidable cause." You and I are the only members of that committee here, and I suggest that you make that as an addition to that report, and let it stand as the report of the committee in that way.

JUDGE McLaurin: Will that meet your objection?

MR. KING: As to that particular feature of it it would. But I do not understand just how you can afford to recommend that a practicing attorney from another State, who perchance has not found the diamond in the stream that our friend told us about last night, and wants to move to Texas, must practice under a temporary license for a period of twelve months.

MR. LEE: Can't he get a temporary license in your opinion and experience and observation very much easier than he can get a permanent license?

MR. KING: But he may never get the permanent license.

MR. LEE:- Then he ought not to be allowed to practice. The answer to that is easy.

JUDGE STREETMAN: I may answer Mr. Lee's statement with the remark that I first had occasion to appoint these boards of examiners while I was on the Court of Civil Appeals. I was very willing to undertake the job of appointing an examiner, but I was very glad indeed that I did not have to stand the examination, because I did not believe I could make it. (Applause.)

MR. LEE: I expect that is true. (Laughter.)

MR. JONES: It seems to me that we should require a year's time for a permanent license in Texas. We require Texas boys to study three years at the University of Texas law school before we think our own Texas boys are fit to practice in our own courts, and you propose to bring a man in from every other State in the Union and license him in less than a year's time. Now, suppose he knows the law of some other State of this Union, he can very profitably spend a year in Texas studying the Texas statutes, and decisions of our courts, and getting himself properly equipped to practice law in Texas, before getting a permanent license. This committee has arranged so that that man is not going to starve. If he wants to move to Texas with his family he gets a temporary license, and if he has a general knowledge of the law he is practicing law all the time. He is simply studying for a year to get his permanent license. If we are going to keep our Texas boys tied down for three years before they are fit to practice in the District Courts of Texas, and welcome the other fellows here and give them a license in twelve months, it is unfair to the Texas boys, and we have not fixed too high a standard for the stranger. I say you do not put a hardship on anybody that comes to Texas and invite him to practice under a temporary license, and when he has qualified under the high standard of excellence that we make our own boys qualify under he can have a permanent license, and if he does not qualify, he ought not to have it.

MR. KING: Doesn't your argument assume that every man who comes to Texas is coming prepared to study law? Suppose you have a boy from Tennessee, who has attended three years in the University of Tennessee and graduated there, or from

North Carolina, and graduated in North Carolina, and then has been engaged in the practice for some years, would you require him to come here and study a year?

MR. FRANK C. JONES: Why not?

MR. KING: He has already spent the time our Texas boys have spent and are now spending, and you propose to give him a temporary license, after having undergone the work there, and make him wait twelve months for a permanent license.

MR. JONES: Take his case, and what hardship is it? It is his misfortune he did not attend the law school of the University of Texas. Unfortunately, he chose the law school of another State. He would not have taken the law school of that State if he had not expected to practice in that State, because of his kinship, acquaintanceship, training and peculiar fitness to practice where he studies. He studies there three years, and then he finds out the truth, that Texas is the best State in the Union, and he wants to come here. We do not put any hardship on him. He comes in here and he practices law from the jump, just as soon as he gets his temporary license, but we do not put the Texas tag on him of high excellence required by our three years' training in Texas law until he has met the requirements we make our own people come up to. I say that is fair to him. Let him study a year. (Applause.)

MR. J. G. WREN: I believe that I am one of the few members of the Bar here who was so unfortunate as not to have attended the State University and graduated from it. When I stood the examination there were sixteen applicants, as I remember, here in Galveston. Every applicant, without exception, stated to me that they only wished they could have had some practical experience before they stood the examination. There was one applicant, a man about fifty years old, who had practiced law in Iowa for eighteen years, and he stated to me during one of our recesses that he was in serious doubt as to passing the examination, because he was not familiar with our mode of pleading and practice, and he said that if he could have practiced law here for a year before standing the examination it would have helped him materially.

MR. JONES: If he could have practiced under a temporary license?

MR. WREN: Yes.

THE PRESIDENT: Are you ready for the question? The first motion was to adopt the report of the committee with the addition that was suggested in regard to sickness. Judge Streetman makes the motion to amend the report by striking out the words "one year," and inserting therein "six months," making the examination every six months instead of once a year.

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The question being put on the amendment, by rising vote the amendment was lost by a vote of 21 against to 12 in favor thereof.

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THE PRESIDENT: The motion recurs in its original shape.

MR. HAWKINS: I want to call attention to two things before the motion is put.

THE PRESIDENT: I think the discussion should be closed, Mr. Hawkins. It is half past eleven, and we have a great deal of business to transact, and we gave unlimited discussion to it before voting, and we ought to close it, if possible, unless you want to make some further amendment.

MR. HAWKINS: I could not discuss another amendment under Judge Streetman's motion. It is the first opportunity I have had.

THE PRESIDENT: I do not want to cut off any discussion, but I want to get through.

MR. HAWKINS: I could not make a motion while Judge Streetman's motion was pending. The two suggestions I have in mind are these: First, to make the temporary certificate expire sixty days after the first day of the next examination term, rather than upon that day, so that it will lap over the period necessary for the examination and grading of the papers and the issuance of the permanent license.

JUDGE McLAURIN: I think I can say for the committee that we will accept that. That is a good idea.

MR. HAWKINS: The next is that the revenues from the payment of the fees, according to my figures from 214 men, the last annual number of applicants, plus those from one court not reported, will amount to more than \$6,000, which in my judg-

ment is more than is necessary. The amount ought not to be excessive. Half of that will amply pay the salaries of the three examiners and all the incidental expenses, and I move to amend by reducing the fee, cutting that fee half in two, making it \$12.50, instead of \$25.00, which will meet the salaries of the three examiners, and all the necessary expenses of printing, expressage, telegraphing, and everything else connected with it.

MR. DEAN: I second the motion.

JUDGE McLAURIN: We do not know how many men we are going to have. We had 248 the last two years. There are eight clerks, and they receive five dollars a day. There are at least eight subjects, according to the recommendation of the Supreme Court. Now, it will cost forty dollars a day to hold an examination at eight places, and it is not the desire that any man shall be cut down in the number of hours, so that he shall not have plenty of time, hence the clerks' fees per diem for the several days of the examination must not be forgotten in determining what the cost shall be.

MR. ROBERTSON: I move that we lay that amendment on the table.

MR. HAWKINS: If Judge McLaurin is confident that it is not more than a proper amount I shall not insist on it. I thought half of it would do. I withdraw the amendment.

MR. BRANCH: I think we all agree that we do not need the amounts derived from the examination fees to make any money for the State, but only to cover the expenses actually incurred, and I suggest that we make the fee the patriotic figure of twenty dollars—the eagle or double eagle—whatever a twenty-dollar-bill is. It is a whole lot for a young lawyer.

MR. LEE: Let us accept that.

JUDGE McLAURIN: All right.

THE PRESIDENT: The amendments that have been suggested have been accepted by the committee, and the question will recur upon the original report, with the changes suggested.

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The report was thereupon unanimously adopted as amended.

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THE PRESIDENT: Our next business is the report of the



committee on commercial law, by Frank C. Jones. It is now twenty-five minutes to twelve o'clock, and we must hurry. The discussion is interesting on all of these papers, but unless we want to have an afternoon session we will have to cut our discussion somewhat shorter than it has been.

#### REPORT OF COMMITTEE ON COMMERCIAL LAW.

GALVESTON, TEXAS, July 2, 1912.

*To the President and Members of the Texas Bar Association:*

Your Committee on Commercial Law begs leave to submit the following report:

We find, by consulting our By-Laws that it is the duty of this committee "to report the best means to produce uniformity in commercial law and usages." The two last preceding reports of this committee have fulfilled this duty, and have urged upon this Association the importance of securing uniformity of State laws.

In order that the matter may be again forcibly brought to your attention, we take the liberty of quoting from the annual address of President Hiram Glass, at Waco, last year, as follows:

"In 1890, the American Bar Association, following the lead of the New York Legislature, resolved to recommend the passage by each State and by the Congress of the United States for the District of Columbia, certain uniform laws. To give effect to the recommendation to promote uniformity of legislation, the organization known as the Commissioners on Uniform State Laws, consisting of commissioners from each State and Territory willing to participate in the movement, was organized and since said time has held twenty annual national conferences. Forty-eight States and Territories, including the District of Columbia and the Philippine Islands, are represented in the conference.

A uniform Sales Act, Uniform Stock Transfer Act, Uniform Negotiable Instrument Act, Uniform Warehouse Receipts Act and a Uniform Bills of Lading Act have been prepared and recommended for passage by the different States and Territories. Each of the acts has been drafted by experts, carefully considered in committee, at various sessions of the whole conference, after being printed in tentative form, and sent out for public and private criticism. Each of these acts has therefore had the most careful scrutiny, and, as a result, it is believed that they represent the actual law on all the subjects covered, and where the law of the various States differs, the weight of authority is expressed in these acts.

"The necessity for such uniform legislation is well expressed in the last Annual Report of the President of the Conference, as follows: 'All of these acts have been prepared in response to the pressing

need of the business world to remove as far as possible the uncertainty and annoyance arising from the widely differing laws of the States and Territories on matters of daily importance. The Conference of Commissioners has been careful to avoid taking up any subject that is not so far settled and of such universal application as to make it a proper subject for embodiment in a statute. They have followed largely the precedent, and have been guided by the experience of Great Britain and her colonies in their selection of subjects. The adoption of the American Uniform Commercial Acts and their interpretation by the courts of last resort in accordance with the spirit of prevailing mercantile usage, will remove one of the greatest drawbacks to the satisfactory working of our dual political system in its application to business matters, and can not fail to strengthen that system itself.

"As shown by the last annual report of the conference, the Uniform Negotiable Instrument Act has been enacted in Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming, in all thirty-eight States and Territories. The Uniform Warehouse Receipts Act has been adopted in six, including the Territory of Arizona. The Uniform Stock Transfer Act and Uniform Bills of Lading Act have met with much favorable comment, and have been adopted in some of the States, and will be adopted in a great many more.

"Texas has been represented at the last three annual conferences, and the Governor has appointed commissioners for the next annual conference, to meet in Boston, Massachusetts, the latter part of August, and it is earnestly hoped that each of the appointees will be in attendance.

"This State has not passed any of the uniform acts, but it is hoped that the Legislature will, as early as possible, give to the citizens and the business interests of the State, the advantage of operating under the commercial laws that have received the careful and painstaking efforts of the ablest experts in their preparation. The greatest evil affecting the passage of laws is what is denominated 'hasty legislation.' This is not said, and must not be understood, as an unfriendly criticism. It is the result of conditions over which the Legislature would seem to have no control.

"Considering the length of our legislative session, the important and varied subjects of legislation, in the very nature of the case it is impossible for our lawmakers to give that careful and painstaking attention to the preparation and consideration of the many and varied proposed acts that is deserved and that is absolutely necessary to

make them perfect so far as it is possible to do so. Longer sessions and better pay for the members of the Legislature would largely remove the evil referred to. However, the statement that 'the laborer is worthy of his hire,' does not seem to be applicable to our public officials. There seems to be small prospect that the pay will be increased. Until that is done, it would seem to be asking too much of our lawmakers to remain in session at so great a financial loss. In this state of affairs, would it not be well for the Legislature to take advantage of, and adopt, the valuable and almost perfect work of the Commissions on Uniform State Laws? I earnestly hope the next Legislature will see proper to do so."

In the report of your committee last year, the Uniform Laws of Negotiable Instruments, of Bills of Lading, of Warehouse Receipts, of the Sales of Goods, Partnership and Divorce, were recommended to this Association, and the report closed with the recommendation that a committee of three be appointed to make the study and investigation suggested, and report back to this Association at the next meeting, upon the desirability of endeavoring to secure the adoption in this State of one or more of all such acts, or else that the succeeding committee upon the subject be instructed to make such report.

The committee also renewed the recommendation of the preceding committee, that we endeavor to secure the passage of an act recognizing the Commission of Uniform State Laws, and creating a similar board of commissioners in this State, to meet annually with the Conference, and providing for the payment of their actual emergency expenses in the discharge of their duties, and for the participation of this State in the general expenses of the Conference, and that such committee be authorized and instructed to draft a bill for that purpose and endeavor to secure its passage.

This report of your committee as constituted last year was adopted by this Association, but so far as we are advised, no such committee was appointed by either the out-going or in-coming President, and the matter remains where it was when the report was adopted.

Your committee has deemed it not only in line with the duties prescribed by your By-Laws, but of such importance, aside from this, that these recommendations of your former committee and your President are again presented to you as the best possible method of bringing the attention of this Association to this important matter. There has been no session of the Legislature since our last meeting, and under the By-Laws of this Association, your President in his address gives to the Association the decisions of our courts upon any matter in the field of Commercial Law, as well as other fields which may be novel or interesting, therefore your committee has not deemed it within the scope of its duties to touch upon these matters.

There is one matter of special legislation which your committee has thought proper to recommend. In the Bulk Sale Law passed by

our Legislature in 1909, a copy of which is attached to this report for convenience, you will find that sales of stocks of merchandise are prohibited without due notice to creditors in ample time for them to protect themselves against fraudulent transfers. Section 3 of the act, however, reads as follows: "Nothing in this act shall apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity, nor to a sale or transfer of stocks of merchandise for the payment of bona fide debts where all creditors share equally and without preference in the sale or transfer of the proceeds thereof."

We recommend that the latter part of said third section after the words "official capacity," in the third line, be stricken out and repealed, and that we attempt to secure such amendment by our State Legislature. Members of the committee have had several experiences with this provision, and find that parties have sold their stock of merchandise at a sacrifice and faithfully saw to it that the proceeds of the sale were distributed equally and without preference among creditors, but this enables such sales to be made to a relative or a creditor in order to favor him, or to a friend, as a secret trustee, and it is almost impossible to get at the proof, and tends to involve litigation that many creditors hesitate to enter upon. Your committee can see no necessity for this exception being made. It opens the door to fraud, and takes away that protection intended to be given by the act to creditors, and is not necessary for the protection of an honest debtor.

If this amendment should be adopted by our State Legislature, it would leave section 3 reading as follows: "Nothing in this act shall apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity."

All of which is respectfully submitted.

FRANK C. JONES, Chairman.

JOHN L. DYER.

JOHN L. PEELER.

HARRY T. JORDAN.

C. A. KELLER.

Committee on Commercial Law.

#### COPY OF BULK SALE LAW OF TEXAS.

S. B. No. 18.

#### AN ACT

#### TO BE ENTITLED

An act declaring void the sale or transfer of portions of stocks of merchandise otherwise than in the ordinary course of trade in the usual and regular prosecution of the seller's or transferrer's business, and sales or transfers of entire stocks of merchandise in bulk unless made in compliance with certain named conditions and regulations, and prescribing such conditions and regulations, according to which such sales may be made valid, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That any sale or transfer of any portion of a stock of merchandise otherwise than in the ordinary course of trade in the usual and regular prosecution of the seller's or transferrer's business; or a sale or transfer of an entire stock of merchandise in bulk, shall be void as against creditors of the seller or transferrer unless the purchaser or transferee shall at least ten days before the sale or transfer, in good faith make full and explicit inquiry of the seller or transferrer as to the name and place of residence or place of business of each and all creditors of the seller or transferrer, and the amount owing to each such creditor by the seller or transferrer, and obtain from the seller or transferrer a written answer to all inquiries, which answers shall be sworn to by the seller or transferrer; and unless the purchaser or transferee at least ten days before the sale or transfer in good faith notify or cause to be notified personally or by registered mail each of the seller's or transferrer's creditors of whom the purchaser or transferee has knowledge, of said proposed sale or transfer.

SEC. 2. Any purchaser or transferee who shall conform to the provisions of this act shall not in any way be held accountable to any creditor of the seller or transferrer for any of the goods, wares or merchandise that have come into the possession of said purchaser or transferee by virtue of such sale or transfer.

SEC. 3. Nothing in this act shall apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity, nor to a sale or transfer of stocks of merchandise for the payment of bona fide debts where all creditors share equally and without preference in the sale or transfer of the proceeds thereof.

SEC. 4. The fact that there is no adequate law in this State regulating the sale of stocks of merchandise in bulk and preventing fraudulent sales of such stocks creates an emergency requiring that the constitutional rule requiring bills to be read on three several days be suspended and the same is hereby suspended and that this act take effect from and after its passage and it is so enacted.

(NOTE.—This law took effect June 13th, 1909.)

THE PRESIDENT: What shall we do with the report?

On motion of Mr. Branch, duly seconded, the report was unanimously adopted, received and filed.

MR. JONES: I hope, since the report has been adopted, as it was last year, that the President of this Association, either the one we now have or the incoming one, will take some active steps to have a committee appointed to take this matter of uniform legislation up with the Legislature, and also the repeal of that obnoxious section of the bulk sales act.

MR. LEE: Does your report embrace that committee?

MR. JONES: It embraces it, but it was overlooked. They approved the report.

MR. BRYAN: I understand there will be a committee appointed to carry any recommendation made to the State Convention and also to the Legislature.

THE PRESIDENT: The next thing is the report of the Committee on Criminal Law, Judge Joseph E. Cockrell, chairman. Judge Cockrell wired me day before yesterday that he got his dates mixed, and thought this meeting was to be on the sixth. He said he was busy preparing his report, but his report has not reached me, and, of course, we will have to pass that over.

MR. LEE: I make the suggestion, if you think Judge Cockrell's report is going to come, that it be received and filed and included in the proceedings of this meeting. I make that motion.

MR. JONES: I second the motion.

THE PRESIDENT: We can request that he prepare it anyway and that it go in the proceedings.

(The motion was unanimously adopted.)

MR. BRANCH: The time, as the chairman indicated a short time ago, is too much occupied for any detailed speech upon the question of criminal law, but I would like to say—

THE PRESIDENT: We have a regular order which I think probably we had better get through with, unless you have some privileged matter. That will come up a little later. I do not want to cut you off, but you will have a chance under the order of new business. The next business is the report of the Committee on Grievances and Discipline, Hon. James E. Stubbs; chairman.

JUDGE JAS. L. AUTRY: I believe that under the practice of this Convention the chairman of that committee is the active member and all the other members are purely ornamental. On that committee I am one of the other members, and I wish that Mr. Stubbs were present. I would not like to ascribe his absence in any respect to any disability arising out of his attendance on the banquet, though the circumstance speaks for itself. (Laughter.) The committee on Grievances, Discipline and Legal Ethics, I am glad to report for the committee, has re-

ceived no complaint in the nature of a grievance during the year against any member of the Association which would be worthy of mention in a report, and accordingly I think we may assume that no member has committed any offense of any kind which would be worthy of mention at all, and, accordingly, no discipline need be suggested. So far as legal ethics are concerned, I assume all the gentlemen will remember that a year or two ago we adopted a very elaborate code of ethics, and I think it goes also as a proper and necessary conclusion that every member of the Association has observed all of the terms of that code all during the year, and accordingly there have been no infractions, and there is no further report to make.

THE PRESIDENT: It is very gratifying that out of a membership of between 650 and 700 no reports have been lodged with the committee.

MR. LEE: I would like to ask, does your report extend only to last night, or does it come up to date? (Laughter.)

JUDGE AUTRY: I think it comes up to date, and I shall make it on that assumption. (Laughter.)

THE PRESIDENT: The report of Judge Claude Pollard on Deceased Members of the Association is next in order.

THE SECRETARY: He makes a rather incomplete report, which I have here, and will read.

#### REPORT OF COMMITTEE ON DECEASED MEMBERS.

*Hon. R. E. L. Saner, President Texas Bar Association, Galveston, Texas:*

DEAR SIR: Your Committee on Deceased Members herewith beg leave to submit this report upon the following members of this Association who have died since the last meeting:

A. L. Davis, Houston.  
Z. I. Harlan, Marlin.  
Phillip Lindsley, Dallas.  
L. W. Moore, LaGrange.  
Carlisle B. Martin, Houston.  
D. M. Prendergast, Waco.  
Roland H. Stokey, Dallas.  
J. L. Young, Cooper.

Respectfully submitted,

CLAUDE POLLARD, Chairman.

## Z. I. HARLAN.

We, the committee appointed to draft resolutions expressive of the sentiments for the Texas Bar Association upon the death of the Hon. Z. I. Harlan, ask leave to submit the following report:

Whereas, It has pleased the Divine Law Giver to enter our midst and call from our number to his last reward our friend and brother at the meridian of his usefulness, in the full vigor of his mental powers; and feeling a sincere desire to place on record our estimate of his many noble qualities, and to voice our appreciation of his worth as a man as well as a deep feeling of regret which we, as his associates and professional brethren, feel at his untimely death, and to evince the high esteem in which he was held during a life of usefulness and devotion to duty.

Therefore, be it resolved—

First. That in the death of our lamented brother, which occurred at his home in Marlin on the 25th day of July, 1911, this Association has lost one of its ablest members, who in every respect was a model of personal and professional honor and integrity; that as a lawyer he was able, fearless in the discharge of every duty, faithful to his clients, zealous and untiring in his efforts to arrive at the law, always respectful to his opponents and courteous to the court; as a Christian, he was true and devoted to his church.

Resolved, that we sincerely deplore his death, and grieve with those who loved him, for his many estimable qualities of heart and mind, and that we tender to his bereaved family our sincere condolence, and that a copy of these resolutions be printed in the proceedings of this Association.

## JOSEPH LENARD YOUNG.

At his home in the town of Cooper, Texas, on February 12th, 1912, Joseph Lenard Young died suddenly after an illness of three days.

He was born in the town of Newland, Georgia, June 11, 1860. He was educated in the common school of his native State and moved to Texas in 1888, and taught school in Lamar County for two years, and, while teaching, was, between school times, reading law under the late Capt. V. W. Hale, of Paris, Texas. He moved to Delta County in 1890, and began the practice of law, which he continued till his death. He was a very close student of the law, and at his death the Bar of Cooper passed unanimously the following resolutions among others which were spread in the minutes of the district court records of Delta County, to-wit:

"Whereas it has pleased Almighty God to call from among us J. L. Young, a member of this Bar:

"Therefore be it resolved—



"First. That in his demise, we have lost one of the most studious, painstaking, and able attorneys of this county; one true to his clients, honest in his convictions, and faithful in the discharge of every duty and trust imposed upon him."

#### CARLISLE BEEMAN MARTIN.

Carlisle Beeman Martin was born in Georgia, and came to Texas in 1873, having practiced law more than thirty years at the time of his death. After finishing his course at the Agricultural and Mechanical College, he read law at Huntsville under Abercrombie & Randolph, was licensed in 1881, and located at Cold Springs in 1882. Shortly afterwards he was there elected county attorney, and afterwards served for six years as district attorney. He was one of the most vigorous, forceful, fair and successful district attorneys in that section of the State. In 1894 he removed to Houston, and formed partnership with J. Fisher Lanier and John H. Kirby in the practice of the law. In 1902, Mr. Kirby having retired from the active practice of the law, and Judge Lanier having removed to Beaumont, Mr. Martin reassociated himself under the firm name of Lanier & Martin and kept his office for the most part in Beaumont. His firm was general attorneys for the land department of the Houston Oil Company of Texas and the Kirby Lumber Company, and won many intricate and complicated cases. On January 1, 1910, the partnership of Lanier & Martin at Beaumont was dissolved and Mr. Martin made his headquarters exclusively in Houston. A sense of justice and fairness characterized his practice of the law. He was faithful to his friends; he was courteous and courtly toward all. In his personal life and nobleness of character and in the practice of his profession as a lawyer he was well worthy of emulation.

#### ROLAND H. STOKEY.

Roland H. Stokey was born in Dallas County, Texas, on September 13, A. D. 1886. He was a member of the Grace Methodist Church, and graduated from the Dallas High School in the class of 1904. He began his public career as a reporter on The Dallas Morning News, which position he occupied with credit and honor to himself and the paper. As a reporter he was painstaking and fair toward all persons concerned. While working as a reporter he began the study of law, pursuing his studies diligently.

In September, 1910, he resigned his position with The News and entered the Lebanon Law School, Department of Law, of Cumberland University, from which institution he was graduated with honors in June, 1911, and immediately thereafter stood the required examination for admission to the Bar. Passing the examination with credit, he began the active practice of law in Dallas.

He was rapidly establishing himself and gaining recognition by the Bar as a true friend and affable gentleman and a young lawyer with promise of a great future and high standing in the profession. His sudden death by drowning, in an effort to save the life of a young lady friend, tragically ended a splendid young manhood, full of hope and promise to himself, his country and those who loved him. Therefore, be it

Resolved by the Texas Bar Association, That in the death of Roland H. Stokey, the State, the nation, the city and county have lost a valued member and a young life worthy of emulation in sobriety, industry, integrity and application, and that society can ill afford to lose the example and influence of so noble a character.

That the Bar Association has lost a valued young member, who, though but beginning his career in his chosen profession, his loss is felt and realized by those who knew him.

#### PHILIP LINDSLEY.

Philip Lindsley died at Dallas, Texas, on December 4, 1911. He was born at Nashville, Tenn., on the 2nd day of August, 1843.

Sixty-nine years was his span of life, consecrated to honor and crowned by integrity. This modest, quiet, cultured gentleman made the world better in his living. He breathed an atmosphere of gentleness and lived in the sunshine of kindness; courteous always and considerate of all, he found a warm place in the hearts of his associates, and his friends were many. He was and deserves to be honored and remembered as a good man.

Philip Lindsley received exceptional educational advantages. Lebanon, Tenn., was the Alma Mater of his legal education; ill health cut short his service in the Confederate Army, he having enlisted in Hutton's Seventh Tennessee Regiment while still a law student; after a time he resumed his law studies, and after the war entered the practice of law.

In 1869 he married Miss Louise D. Dickinson, daughter of Henry Dickinson of Columbia, Miss., who, together with four children, survive him.

Phillip Lindsley served in the Legislature of Tennessee, having been overwhelmingly elected thereto from Davidson County. He was a conspicuous figure in the municipal affairs of Nashville, vigorous in the uplift of its civic virtue and in the advancement of the cause of education.

In 1871 he removed to Dallas, which continued to be his home until his death.

For twelve years or more he practiced law in this city; for the past ten or twelve years he abandoned the practice of law and devoted himself to investments and his private business, his connections with the

law being confined to serving as Master in Chancery in the United States Court at Dallas, which he filled with unbiased judgment and un-failing fairness.

Among the older lawyers of Dallas, Philip Lindsley was a familiar figure, and beloved by them all; esteemed for his learning; respected for his intelligence and integrity, and distinguished for his genial nature and fairness, and his never-falling courtesy and kindness; and through all the years amongst us this modest, genial gentleman has lived up to these ideals and is deserving of this distinction.

His life suggests the thought expressed by the poetic pen of Alice Carey: "True worth is in being—not in seeming, and in doing each day that goes by some small good—instead of dreaming great things to do bye and bye.

"For whatever men may say in their blindness,  
No matter the fancies of youth;  
There is nothing so kindly as kindness.  
And nothing so royal as truth."

Philip Lindsley was a lover of literature and his vigorous expression and facile pen bespoke companionship, in reading and thought, with the writers who still live in books. He was from young manhood a member of the Presbyterian Church and around his fireside, that knows him not, he is remembered and revered as a loving, indulgent father and devoted husband.

THE PRESIDENT: Where the report is not complete I think we should get the secretary to see that the committee does complete it, so that we can have the complete report in the proceedings.

MR. LEE: I make a motion to that effect, that the report be received, filed, completed and published.

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The motion was duly seconded and unanimously adopted.

THE PRESIDENT: Next is the report of delegates to the American Bar Association meeting at Boston, Norman G. Kittrell, O. L. Stribling and B. B. Stone. Are any of those gentlemen here, or have they sent a report?

THE SECRETARY: I have no report from them.

THE PRESIDENT: We have a paper here, which I am very sorry to say, on account of a misunderstanding on my part the author is not here to read. I did not think we would hold a session today. Mr. John M. Spellman, of Dallas and Chicago,

had prepared a paper on patent law, and he wired me from Chicago that he was detained in a case and could not reach here before this morning. I had it from the chairman of the board of directors that they had decided upon a two-days' meeting. Mr. Spellman asked me to wire him in Dallas, so that he might know, and I wired him yesterday morning that the meeting would adjourn last night with the banquet, and he would not have a chance to reach here, and it was through my error that I misled Mr. Spellman. His paper is with us, and I am ready to entertain a motion to have it read or have it printed.

MR. BRYAN: I move that it be received and published with the proceedings.

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The motion was duly seconded and unanimously adopted.  
The paper is published in full in the Appendix.

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THE PRESIDENT: Next is miscellaneous and unfinished business. Have we any such business carried over that we want to take up?

THE SECRETARY: There is no unfinished business.

THE PRESIDENT: We will now take up new business. Is there any new business to be presented?

JUDGE ASHE: Mr. President and gentlemen of the Association, I have a resolution about five or six lines long that I desire to present for your consideration. Today we are celebrating the great Independence Day of this nation, and I would like for us to celebrate further the independence of the fair women of this State, and with that in view I present this resolution:

"Be it resolved by the Texas Bar Association, That the Legislature of Texas should provide by law that married women shall have the right to the exclusive management, control and disposition of their separate property and their own personal earnings, independent of the consent or joint action of the husband, and to make contracts the same as a *feme sole*."

If that resolution requires any defense, I call upon the chief suffragette of this Association, Judge Reese of the Court of Civil Appeals, and upon Mr. Frank Jones, being the only ladies' men in the Association.

MR. FRANK C. JONES: I second the adoption of the resolution. As I understand it, the Législature has already taken a step in that direction by providing by a recent act that they can have their disabilities removed by and with the consent of their husbands. Now, why in the world should they have to go and get the consent of their husbands, when the very reason they want the disabilities removed is because they want to get away from their husbands? It is because some husband is either gambling away his wife's estate, or drinking it up. They are absolutely tied under the legislative act to their husband's consent, but the resolution offered by Judge Ashe will leave them legislatively free as to their own property, and I do not see why they should not be in Texas.

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The resolution was adopted with only a few dissenting votes.

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JUDGE SPEER: I have a resolution. The time for speech-making is past, and so far as the resolution I desire to offer is concerned, it has been the subject of numerous speeches on the floor of this Association from the time the most excellent address of our President was read until the close of the banquet last night. I want to say that a saner paper I have never heard than that of the President of this Association, and that was not a pun, but was the simple truth. This is a day of progressiveness, and I am not willing this Association should now adjourn until we have put ourselves upon record in keeping with the spirit of the times. Without further discussion I desire to read the resolution because every man here has his mind made up one way or the other on this issue, and no amount of discussion would change either one of us.

“Resolved, by the Bar Association of Texas, That, whereas there is much complaint through the press and otherwise at what is popularly denominated the law's delay, and much criticism of the Courts and lawyers generally for the manner of the administration of justice through our Courts, both in civil and criminal cases, and since we recognize that whatever of blame there may be in these respects is due largely to the practicing lawyers and to the Courts themselves, therefore,

"We, as representatives of our profession, pledge ourselves to lend our best efforts to the elimination of all just cause for such complaints and criticisms, and promise our most earnest co-operation with the Courts and the Legislature in every reasonable effort to administer the law without unnecessary delay to the end that justice may be done with all reasonable dispatch. We recognize the power and right of the Legislature to enact rules of procedure and to prescribe rules of construction and interpretation, as well as of substantive law, and where it has done so we pledge ourselves to aid in all reasonable manner the enforcement of such acts according to their spirit, to the end that their purposes may be accomplished and that justice may be done."

MR. LEE: I second the resolution.

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The resolution was thereupon adopted.

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MR. JOHN L. DYER: We have had a great deal of discussion here, as we have had for the past six or seven years at every meeting of this Association, each time the question has come up, regarding procedure, and jurisprudence, and revision connected with the two. Undoubtedly there is a demand that there be some change both in our jurisprudence and practice acts. I do not think there is a gentleman who is a member of the Bar Association who does not fully approve of it. On the other hand, they do feel that whatever is done should be done in some intelligent way, and should be done properly. As Chief Justice Brown said last night, we can meet here for six or seven years, and we can pass resolutions, and we can resolve, and whereas and therefore, and nothing ever be done. The only change that has come was last year, when the Supreme Court changed its rules to some extent. Whatever is done must be done through the Legislature, for they alone can change the practice acts of this State. I have conferred with several, and a resolution has been prepared which is to be submitted to this meeting. I recognize that the time is limited, and no member now wishes to stay here longer on a discussion, and I wish only to present it.

"Resolved, That, in accordance with the spirit of the address of the President of this Association, and of the report of the Special Committee on Reform of Judicial Procedure, a committee of five, with power to increase its membership to thirty-one, be appointed by the President to draft and urge the passage of an appropriate bill for the purpose of creating a commission whose duty it shall be to study carefully the present conditions in Texas, as to the judicial system, and the procedure in the Courts, criminal and civil, and also the systems of remedial justice in force in other States of the Union, and in such other countries as may seem to them desirable, and to prepare a report setting forth the results of such investigation, accompanying said report with such bill or bills, Constitutional amendment or amendments, either or all, as they think best, for consideration by the Governor and Legislature and people of the State, which report and accompanying recommendations should be published for free distribution among the people of the State, to the end that we may act advisedly in the matter of judicial reform now so generally demanded. (Signed by W. H. Burges and John L. Dyer.)"

JUDGE ASHE: I move the adoption of the resolution.

JUDGE SPEER: I second the motion.

MR. BRYAN: I move to amend that that committee shall present this matter to the Democratic State Convention, and also to the Legislature, and urge upon them such action as we can get in favor of those matters that have been adopted and recommended by this Association.

MR. BRYAN: The recommendations this meeting has already adopted can be readily included in it, I suppose. The chair could appoint those members as members of this committee.

JUDGE SPEER: The suggestion has been made that this committee be instructed to put this matter before our State Convention. Now, I am not well enough posted on our election law to know whether that can be done. I have an indistinct understanding that nothing of that kind can be put there except in a certain form.

MR. DYER: I do not believe there would be sufficient time

for the appointment of this committee, and for them to act properly before the convention meets. They can not do it.

MR. BRYAN: I withdraw that part about presenting it to the convention.

THE PRESIDENT: We can recommend it, I understand, to the convention.

JUDGE McLAURIN: I am not sure just what the law prescribes. There is one thing that I am extremely anxious shall not be done, notwithstanding the sanity of the suggestion. It is suggested in the President's report, as to the commission on court procedure, etc., that the commission shall consist of seven members, etc., and shall not be selected on account of any political affiliation, and suggests the President of the University of Texas. I object to the last, for the very reason that is set out in the recommendation of our President himself, that the President of the University of Texas, or any other man connected with the University of Texas, should not mix himself with these politics.

MR. DYER: The resolution as introduced here does not relate to the appointment of the committee referred to in the President's address, but that the President of this Association appoint these thirty-one men to correspond with the districts of the State, and that they report to the Legislature with their recommendations, the representatives from all over the State, on this question.

JUDGE McLAURIN: I only want to be safe to this extent, that the President of the University shall not be a member of that committee.

THE PRESIDENT: It is not contemplated that he shall be a member of that committee, is it?

MR. DYER: No, sir; nobody specifically, but left to the judgment of the President of the Association as to whom he shall appoint.

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The resolution was thereupon adopted.

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MR. FRANKLIN: I understand that the American Bar Association desires an expression from each of the State Associa-



tions on the question of the recall of judges and recall of judicial decisions, and in order to get the sense of this body I offer the following resolution:

“Resolved, That this Association is opposed to the recall of judges or judicial decisions by popular vote as unnecessary, unwise, and as a dangerous step toward the destruction of the independence of our judiciary, and our Constitutional principle that our government is one of law with distinct legislative, judicial and executive departments.”

MR. LEE: I move the adoption of the resolution.

(The motion was duly seconded.)

JUDGE JENKINS: In my judgment the Texas Bar Association has no more to do with the question of the recall of judges than a Baptist association or a Methodist conference. These are political questions. Now, by reason of the fact that we are lawyers we may be better qualified as citizens to act on these questions, but they are questions of citizenship, and not for the Bar Associations, and I protest that it is not proper for this Association to express itself upon any political matters. I believe that we should confine our efforts for legislation to matters that pertain to Court procedure and to substantive law, and not to political questions.

JUDGE SPEER: May I ask a question? Would it be satisfactory to include an expression on free raw material? (Laughter.)

JUDGE JENKINS: We might add the recall of tax collectors and constables, just as appropriately as this. I protest that it is not proper to give any expression, and therefore I move that the resolution be laid on the table.

JUDGE SPEER: I second the motion.

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The motion to table was lost by a vote of 14 in favor of the motion to 21 against.

Mr. Franklin's resolution was then adopted by a vote of 26 to 11.

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JUDGE JENKINS: I have a resolution which I handed the Secretary and would be glad to have read.

"Resolved, That the Board of Directors be requested to call the next meeting of this Association not earlier than August 1st, 1913."

THE PRESIDENT: I think that is controlled in our By-Laws, if I am not mistaken.

JUDGE JENKINS: Yes, sir; and it is in accordance with the By-Laws. The Board fixes the date.

THE PRESIDENT: My recollection is that the By-Laws fix it that it shall be on the first Tuesday in July.

JUDGE JENKINS: The Board fixes the time. I examined the By-Laws this morning. My reason for the resolution is that we may obtain a larger attendance of the members of the Bar. As you all know, the members of the Bar are leaders of thought, or, at least, prominent in the talk, in their respective communities, and all over this State the Fourth of July is celebrated, as it ought to be, and the members of the Bar everywhere invited to make addresses on the Fourth of July. I doubt if there is a member here who has not received such an invitation, and many of them feel constrained to accept. Their neighbors want to hear them, and we lose attendance by having the meeting at this time. Many of them are now out engaged in political campaigns, and of course, next year is not an election year, but they are out on the Fourth of July every year, and I think if we establish the precedent of holding it after the Fourth, and after the primary election, we would secure a better attendance and it will add to the efficiency of this Association.

MR. JONES: I believe we can get a better attendance of this Association in July than we can in August.

MR. LEE: I make the point of order that this is an amendment to the Constitution, and no amendment to the Constitution can be made without being filed with the secretary thirty days.

JUDGE JENKINS: I am not trying to amend the Constitution. it is a part of the By-Laws.

MR. LEE: It seems that it is the Constitution and not the By-Laws.

JUDGE JENKINS: It is not an amendment to the Constitution, but an expression of the views of those who are here, to be followed or not, as they may see proper.

MR. JONES: I believe that in August every lawyer in Texas who can get away for a vacation is out of the State. At least a great many of them are. They do not want to stay in Texas during the hottest month of our summer for the meeting of this Bar Association. Another thing, I happen to know that next year in August the Knights Templar of the United States will have their Triennial Conclave at Denver, and a great many lawyers are members of that order, and a great many of them will want to go. I know of that convention. There may be others, but whether they go to the convention or not, the month of August is the worst time to get an attendance in Texas on this meeting of the Bar Association. This year unfortunately a great many of our people are away. It is an exceptional occasion. But I believe that July is the very best time to get any attendance on this Association. For that reason only I would be opposed to the resolution. I move to table the resolution.

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The motion to table was duly seconded and carried.

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MR BRYAN: I wish to offer this resolution:

#### TEXAS BAR ASSOCIATION SCHOLARSHIPS.

Whereas, it has been brought to the attention of the Texas Bar Association that there are, annually in the law school of the University of Texas, young men who are greatly in need of money to enable them to prosecute their studies there, and

Whereas, the Honorable R. E. L. Saner, the President of this Association, in his address as President, has suggested that it would be a thing fitting and proper for the Texas Bar Association to establish in the law school of the University of Texas scholarships to be known as "The Texas Bar Association Scholarships," and to provide for that purpose a fund of not less than \$2500, the interest from which to arise annually shall be available to aid worthy young men in need of assistance to procure money with which to prosecute their studies during the last two years of their attendance upon the law school of the University of Texas; and

Whereas, it appears that this Association will have about \$2000, balance on hand, after paying the expenses of this Association for the current year, now, therefore, be it

Resolved, That out of this balance on hand of the funds of the Texas Bar Association, after deducting the expenses of this Association for the

next ensuing year, be and the sum of \$1500 is hereby set aside for the purpose of aiding in establishing scholarships in the law school of the University of Texas, to be known as the "Texas Bar Association Scholarships;"

That the annual interest accruing upon the fund so set aside shall be used for the purpose of enabling worthy young men, students of the law in the law school of the University of Texas, who need the money with which to pay their way as students during the last two years in that school, to procure such money;

That the money so to be furnished a law student shall not be considered a debt which he shall assume to repay to the source from which he received it, yet it shall be regarded as a moral obligation upon him for its repayment whenever he shall have become able to repay it, and when repaid it shall become a part of the principal fund constituting the foundation for "The Texas Bar Association Scholarships;"

That a permanent committee, to be known as the "Award Committee," composed of the Chief Justice of the Supreme Court of Texas, the President of this Association, and the Dean of the Law Department of the University of Texas, is hereby created to receive, keep, invest, collect, and use, in accord with the purposes in these resolutions indicated, the fund hereby set aside as a foundation for "The Texas Bar Association Scholarships," and any additions that may be made to same from any source;

That the Award Committee shall annually select such young man or men from the middle and senior classes of the law school of the University of Texas, as would in its judgment be suitable persons as recipients of the benefit designed to be accomplished by the establishment of "The Texas Bar Association Scholarships."

MR. BRYAN: I move the adoption of the resolution I have just read.

MR. GLASS: I offer as an amendment that the resolution be received, filed and printed in the minutes, and be considered at the next meeting of the Association, and I am constrained to do that out of this consideration, that I would like to vote for the resolution. I endorse it, but I am not willing to engage, with a handful of thirty or forty members, out of the 650 membership of the Association, to vote away and dispose of this \$1500.00. Under the situation as it exists here I would not vote for the resolution. A year's delay in establishing a scholarship of this kind is not a great deal of importance. It is to go on for all time. It is to be a permanent scholarship and a permanent fund, and another year in instituting it, and bringing it about

and getting it established, will not be an undue or unreasonable length of time. I make the motion with the statement that when it comes up for consideration I shall favor using \$1,500 of the money that is now on hand for the purpose indicated in the resolution.

MR. LEE: I suggest that we might say that it is the sense of this body that this action should be taken and that it is passed over to the next session.

MR. GLASS: Yes, I am willing to do that, and embrace as a part of the motion, that the members here recommend that the next meeting of the Bar Association adopt the resolution.

THE PRESIDENT: The motion to adopt was made by Mr. Bryan, and has been amended by Judge Glass, that it be received, and filed, and considered one year hence, and be printed in the minutes, and that its passage be recommended at the next session.

JUDGE SPEER: I am not so sure but what the motion made by Judge Glass is a good motion. It makes unnecessary an amendment I was going to propose with respect to the personnel of the award committee. I thought I would suggest for your consideration the substitution of the presiding judge of the Court of Criminal Appeals instead of the dean of the law department. It might relieve the dean of the law school of some embarrassment, but those matters can be considered at the next meeting, and I will not make any extended discussion.

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The motion to amend was duly seconded and was unanimously adopted.

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THE PRESIDENT: The original motion of Judge Bryan is now before the house.

MR. GLASS: Judge Bryan's motion was to adopt the resolution, and there is no further action necessary.

THE PRESIDENT: You put it then as a substitute instead of an amendment?

MR. GLASS: Yes, that is really what it was.

THE PRESIDENT: We will then so consider it, as a substitute.

MR. GLASS: The idea is that if any of the members of the Association have any objection to using the money, they are put on notice that they should be at the next meeting to vote against it.

MR. LEE: I am directed by the Bar of Tarrant county to ask this Association to appoint a committee of five, to be named by the President, to take up actively and earnestly the question of raising the salaries of all our judges before the Legislature, both district and appellate judges, with a minimum salary of \$5000 for the district judges. I am not going to enter into any discussion on the matter, because we have had enough discussion on it, and any lawyer who does not think that the salaries of the judges of this State at this time are inadequate is hardly, in my judgment, worth arguing with. I am going to ask the chair to put to the body two propositions. In this connection, I am going to ask that every member of this Association, by a rising vote, constitute himself and promise to the Association, to actively urge an amendment along that line, increasing the salaries, and ask every member here to vote on that proposition except those who are holding office. We will relieve the judges who are here of that embarrassment. Then the second motion is that the incoming President appoint a special committee, and I am going to ask a special committee, because I am interested in this one being taken care of, and not being carried along with a number of others, but to appoint a committee of five, to see that this matter is laid before the Legislature, and that some real, earnest, determined effort is made to improve this condition.

THE PRESIDENT: The first motion is that each individual member pledge himself to work for the proposition of increasing the pay of district and appellate judges to not less than \$5000 a year. Is there any discussion upon that phase of the subject? Those who are willing to pledge themselves to that work will make it known by standing.

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The motion was unanimously carried, the judges present not voting.

The second part of the motion, that the incoming President appoint a committee of five to take care of the matter before the Legislature and press its passage, was then unanimously adopted.

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MR. LEE: I have a resolution which I have been requested to lay before this Association. I do not know anything about the details of this amendment, and I would not undertake to express an opinion about whether the amendment, coming at this time, in the shape it does, is a proper one, but it is one that I think is along proper lines, if properly framed. I am not advocating this particular resolution, but I have been asked to present it. It was sent down here by the Conference for Education in Texas. I am not well enough versed in the details of the matter to make any recommendation on it, but I submit it. Mr. Finty is the only lawyer here who seems to be familiar with the amendment, because I have talked with a number of the lawyers around here, and none of them know anything about it. He says that the proposed amendment applies not only to the boards of control, as they are named, but all boards appointed by law, and it might be construed that it would apply to city commissioners.

JUDGE JENKINS: I only rise to say that I am in sympathy with the amendment.

THE PRESIDENT: I would like to know if the motion is seconded, to get it properly before the house.

MR. LEE: I have simply offered the resolution. I have not moved its adoption.

THE PRESIDENT: There being no second to the resolution we will pass to the next order.

MR. R. S. BOWERS: I have a resolution of thanks which I will read:

We, the members of the Texas Bar Association, having been so admirably and perfectly entertained by the city of Galveston, the local Bar of this city, and the local press and all officers of this Association, deem it a great privilege to heartily offer the following:

Resolved, That it is the sense of this Association that the thirty-first meeting of this Association has been in every respect one of the most

successful and delightful meetings of all, and the greatest reason thereof is that the meeting was held in this beautiful city by the sea; and that the local Bar of Galveston are experts in this line and as entertainers have no equal. To this end we thank most heartily the city of Galveston, the local Bar, the Galvez Hotel, the members of the local press and all other parties who have undertaken to make our meeting in this city the marked success it has been. We crave that all future meetings may be like this one.

THE PRESIDENT: That portion of your resolution referring to the President, or any of the officers and committees I rule out of order, because it is contrary to our Constitution, but that part of the resolution which refers to the entertainment of this Association is in order. The rest will be stricken out. Do I hear a second?

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The motion was seconded and unanimously adopted.

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THE PRESIDENT: Are there any other resolutions? If there are not we now come to the head of election of officers. The office of President is first.

MR. BRYAN: I place in nomination Hon. John T. Duncan, of La Grange. (Applause.)

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The nomination was duly seconded.

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MR. JONES: I move that nominations be closed and that Judge Duncan be elected by acclamation.

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The motion was duly seconded and was unanimously adopted by a rising vote.

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JUDGE DUNCAN: I thank you. I will not make a speech at this late hour. (Applause.)

THE PRESIDENT: Next is the office of Vice-President.

MR. LEE: It is my understanding that it is the unwritten law of this Association that the election of a Vice-President means at the succeeding session the election of the same man for President, which is a good rule, but in view of that fact it behooves us to stop to consider whom we shall elect as Vice-



President. We have with us the oldest and most venerable member of the Texas Bar Association. He was at the first session this Association ever held, at its organization in Houston, and unless it be Col. R. G. Street, I am sure there is no other man in attendance on this meeting, and probably none today living who was in that meeting. Judge Brown told us last night that he came from the county of Washington, and there had a preceptor in law. I am under the impression that this gentleman was his preceptor in law. (Laughter.) Standing in the front ranks of his profession, a man above question and without blemish, before he passes over the great divide I feel that it is a fitting compliment that he should be made the President of this Association. I place before the Association the Hon. W. W. Searcy of Brenham. (Applause and laughter.)

MR. BOWERS: I rise to second the nomination of Mr. Searcy for Vice-President of this Association. I do not believe there is a man in the Association who has taken a keener interest in its welfare since being the Chairman of the Board of Directors than has W. W. Searcy. I will not take up your time now by flattering Mr. Searcy, but I do say that when he comes to be President of this Association you will never have had a more honorable or purer man in that position. (Applause.)

MR. JONES: I move that nominations be closed and that he be elected by acclamation.

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The motion was duly seconded and unanimously adopted.

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MR. SEARCY: Out of the same modesty that moved the President just elected, I can only return my thanks to the Association, and to say to them that it is an honor I have coveted since I have been a member of the Association, and nobody will appreciate it more than I. (Applause.)

MR. BRYAN: It is remarkable how he holds his age. (Laughter.)

THE PRESIDENT: He has done good work. The next officer to be elected is a Secretary. Do I hear a nomination?

MR. FRANKLIN: I am a profound believer in rotation in office, and I suggest that this Association show its faith in that doc-

trine by electing Mr. Cave as a rotating Secretary to succeed himself. (Applause.)

MR. LEE: I second the nomination.

THE PRESIDENT: Do I hear from Mr. Jones? (Laughter.)

MR. JONES: I move that nominations be closed and that he be elected by acclamation.

THE PRESIDENT: Mr. Jones makes the usual motion.

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The motion was duly seconded and unanimously adopted.

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MR. CAVE: I just want to thank the Association for this continued honor, and shall use my best endeavors to make you a good Secretary. (Applause.)

MR. BRYAN: I nominate Hon. W. D. Williams to be our Treasurer, and move that the nomination be closed, and that he be elected by acclamation. (Applause.)

MR. LEE: I make the point of order that the motion is out of order. We have a Treasurer for life. He has always been and he can not be anything else. (Laughter.)

MR. JONES: I move that the nominations be closed and he be elected by acclamation. (Laughter.)

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The motion was duly seconded and unanimously adopted.

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THE PRESIDENT: Next in order is the election of a Board of Directors for the next year.

MR. DYER: Attending these meetings for a number of years there has been a member who has given good service to this Association. I think that service should be recognized, and I place in nomination as chairman of the Board of Directors Mr. Allan D. Sanford, of Waco. (Applause.) There is also here another gentlemen who, I think, should go on the Board of Directors. It is said of him that he talks more and does less than any other member of this Association. I feel like rewarding him likewise. That is Mr. Frank C. Jones, of Houston. (Laughter.) I feel that those who have been elected as President of this Associa-

tion should earn the honor that has been conferred upon them, and that because they have once been President of it is no reason why they should withdraw their help from the Association. I put in nomination as the other three members of the Board of Directors, Mr. H. C. Carter of San Antonio, Mr. R. E. L. Saner of Dallas and Mr. W. H. Burges of El Paso.

MR. GLASS: I second the nomination of these gentlemen, and also move that the nominations be closed, and that the parties named be elected by acclamation. I will put the motion.

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The motion was unanimously adopted.

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THE PRESIDENT: On behalf of the absent Directors, and in order to keep Mr. Jones from speaking, I thank you.

The next order of business is the election of delegates to the meeting of the American Bar Association at Milwaukee.

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On motions duly made and seconded the following delegates were elected:

Judge Sam Streetman, Houston.

Judge M. E. Kleberg, Galveston.

Judge F. C. Proctor, Beaumont.

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THE PRESIDENT: Heretofore there has been made a kind of blanket motion to the effect that if any one contemplates attending the meeting, if he will notify the Secretary of this Association he will issue credentials as if this Association had elected him.

MR. GLASS: I make a motion to that effect.

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The motion was duly seconded and unanimously adopted.

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THE PRESIDENT: Judge Streetman, Judge Kleberg and Judge Proctor go as delegates, and if any other member of this Association finds that he will be able to attend that meeting, if he will notify the Secretary, and the quota has not been filled,

under this resolution he can go as if he had been elected at this time. Is there any other business before the Association?

MR. C. C. WREN: I move that we adjourn.

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The motion was duly seconded and unanimously adopted.

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THE PRESIDENT: I therefore declare the thirty-first annual session of the Texas Bar Association adjourned.

# APPENDIX

## ANNUAL ADDRESS

BY

R. E. L. SANER

PRESIDENT OF THE TEXAS BAR ASSOCIATION

GALVESTON, TEXAS

July 2nd, 1912

*Gentlemen of the Texas Bar Association:*

Our Constitution provides that your President shall open the annual meeting of the Association with an address in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

As the Texas Legislature has not been in session since our last meeting, therefore, we naturally turn to the Congress of the United States:

In looking over the statutory changes passed by the Congress during the past year, aside from the readjustment of judicial districts in the several States, the authorization for the erection of a suitable monument to the American Indian, the authorization for the placing of bridges over several streams, the passage of an act authorizing the change of the name of a number of steamboats, among others being that of the steamer, "Salt Lake City," supposedly as a "Dark-horse Boat" for a trip down the much renowned "Salt River" with a political cargo composed of crumpled reputations, wilted hopes and heart-broken candidates, who were not able to come back, there has been enacted practically no legislation affecting statutory and constitutional law.

There have been many measures introduced, but none up to this time (June 15) has passed both Houses and received the approval of the President. Among the more important measures

considered and over which much discussion has been aroused, none has been more bitterly attacked by its opponents and defended more zealously by its proponents than the "Employers Compensation Act" which passed the Senate May 2, 1912, and is now being considered by the Judiciary Committee of the House of Representatives. Its object appears to be twofold: To insure a proper distribution to injured persons of payments over the entire country, and to obviate the wastage of the present practice in handling such litigation.

I had the honor of serving on a special committee of the American Bar Association to "Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation." This committee met in January of this year in Washington and presented three bills to the Judiciary Committees of both Houses of Congress. Said bills were known as follows: 1st. "Law and Equity Bill;" 2nd. "Technical Error Bill," and 3rd, "Constitutional Review Bill." Neither of these bills has passed both Houses of Congress up to this date; however, we are still hopeful. The Law and Equity Bill is "An Act to amend the 'Judicial Code' by adding two sections, 274-A, providing "Where a suit at law is filed when it should have been brought in equity, or a suit in equity should have been brought at law, the court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice. Any party to the suit shall have the right at any stage of the cause to amend his pleadings so as to obviate the objection that this suit was not brought on the right side of the docket. The cause shall proceed and be determined upon such amended pleading. All testimony taken before such amendment shall stand as testimony in the cause with like effect as if the pleadings had been originally in the amended form."

Section 274-B. "In all actions at law equitable defenses may be interposed by answer, plea, or replication without the necessity of filing a bill on the equity side of the court. The defendant shall have the same rights in such case as if he had a bill embodying the defense or seeking the relief prayed for in such answer or plea. Equitable relief respecting the subject matter of the suit may thus be obtained by answer or plea. In case affirmative relief is prayed in such answer or plea, the plaintiff

shall file a replication. Review of the judgment or decree entered in such case shall be regulated by rule of court. Whether such review be sought by writ of error or by appeal, the appellate court shall have full power to render such judgment upon the record as law and justice shall require."

The Technical Error Bill provides "That no judgment shall be set aside or reversed or new trial granted by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties. The trial judge may in any case submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken on writ of error, shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, if conclusive, as its judgment upon such point reserved may require."

"The Constitutional Review Bill" is an Act to amend the Judiciary Act by adding Sec. 237, and provides, "Where a judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the ~~United States~~; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in the court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State Court, and may,

at their discretion, award execution or remand the same to the court from which it was removed by writ."

There are many important measures pending in the Congress, but the length of my paper will not permit of my mentioning others at this time.

The past few years seem to constitute a cycle of unrest and dissatisfaction with the existing order of things the world over. In this country there is exhibited by almost all classes of our citizenship a spirit of impatience with the decisions of many of our courts. This impatience is shown by intemperate protest, which undoubtedly makes an impression upon the public mind that is unwholesome. As an illustration of the intemperate judgment of our people, a distinguished judge in one of our States has been considered by the President of the United States for appointment to the Supreme Court, and immediately there is a protesting outcry that this judge decided a two-cent fare case contrary to the wishes of the people of his State; instead of taking up thoughtfully and calmly his fitness from the standpoint of integrity, ability and experience, weighing his capacity as a judge, and enquiring if his mental attitude judicially fitted or unfitted him for the Supreme Bench.

The Court of Commerce makes a decision affecting the status of the Interstate Commerce Commission, contrary possibly to what was intended by the Congressional Act creating it—instead of proceeding in an orderly decorous way to amend the law fixing specific bounds for this tribunal, immediately there goes up a protest from many sources to abolish the court and the Congress of the United States has actually passed an appropriation bill with a rider attached thereto, which unless vetoed by the President, will practically abolish this court.

These are only a few passing illustrations of unrest among the people and how it is sometimes reflected in great legislative bodies, which indicates plainly to the thoughtful mind that we need today most careful study of our present problems, which will tend to give us order, certainty and peace in our government.

Captious criticism of the courts, if unchecked, will soon seriously impair the respect and confidence of the people in the government. The Judicial Department of our government is the chief pillar upon which our nation must rest—it is the great



moral substitute for force in controversies between the people themselves, as well as between the people and the State.

Under our Constitutional system the decisions of our courts are something distinct, different and widely separated from the expression of political opinions, or the advocacy of economic, social or moral theories; the Judiciary under our theory of government recognizes only the reign of law with its prescribed universal rules as distinguished from the reign of men with their changing opinions, desires, and impulses. The Judiciary should be above all conflicts of party or faction; judges should be guardians of the existing law, preserving its sanctity throughout its course of continuous change and constant development. It is the one recourse that the weak have against the strong, and upon its purity and uprightness depend the preservation of order, the prevention of anarchy, the perpetuity of free institutions and the continuance of liberty and justice.

If the people become impressed with the idea that appeals to courts are an useless expense, or that the judges are inefficient, partial or corrupt, their whole idea of government is weakened, and if such ideas long prevail, it means that Constitutional Government will ultimately fail. The courts are supposed to exercise their judgment and not their inclinations or impulses. Judges are bound to follow the rules laid down in the Constitution, Statutes, and Decisions, and if changes in these rules are necessary, they should be made through the usual channels provided by the Constitution.

Senator Elihu Root, in a recent thoughtful address, said: "If the decisions of our courts are to be considered upon the same plane and with no greater respect for authority than political opinions, then without doubt the authority of the court will inevitably decline and the independence of the judiciary will cease, judges will then be forced to interpret the law always to suit the majority of the moment, and the recall will be the natural and logical result."

To boil down, concentrate and explain in a short statement, I would say that the real difficulty in the United States seems to be that Statutory law and Constitutional provisions have not kept pace with the extraordinary industrial development which continuously has demanded the progressive readjustment of the

relations between great bodies of men and large combinations of industrial factors, whose development is constantly calling for the establishment of new legal rights and obligations not contemplated when existing laws were passed, and existing Constitutions were written. Instead of the independent individuality of men, we have developed highly the interdependence of one upon others through complicated yet systematized co-operation.

Senator Root summarizes the situation when he says, "Instead of the give and take of free individual contract, the tremendous power of organization has combined great aggregations of capital in enormous industrial establishments working through vast agencies of commerce and employing great masses of men in movements of production and transportation and trade so great in the mass that each individual concerned in them is quite helpless by himself. The relation between the employer and the employed, between the owners of aggregated capital and the units of organized labor, between the small producer, the small trader, the consumer, and the great transporting and manufacturing and distributing agencies, all present new questions for the solution of which the old reliance upon the free action of individual wills appears quite inadequate. And in many directions the intervention of that organized control which we call Government seems necessary to produce the same result of justice and right conduct which obtained through the attrition of individuals before the new conditions arose."

The readjustment of the rules of law and the growth and development of Constitutions under our system of government will be slow and will require patience, as well as perseverance, but it will come. Differences will be settled, experiments will be tried and some will fail, mistakes will be made and corrected, but ultimately through the patient steps and ordinary methods, through investigation and education, the processes of Constitutional readjustment will come about and its final accomplishment will be commended and approved by the considerate and thoughtful men of all classes and of all parties.

The lawyers, in my judgment will and ought to contribute largely to this happy consummation. He it is that is usually a leader in our Legislatures, he knowing the facts and understanding the mischief of over-reaching, unscrupulous and stupid

legislation, as well as the evils of narrow, one-ideal, extreme but well intended legislation, which result in unwise rules of procedure and which instead of helping, serve only to hamper the administration of justice, and which brings reproach upon the Bar and censure upon the Courts. The patriotic lawyer should, and I believe will, exhibit and encourage the true spirit of temperate and patriotic consideration in his private practice, as well as in the halls of legislation, which is the primary requisite to success in working out the problems of Constitutional government. The lawyer, aided by thoughtful and patriotic citizens in other walks of life, should unite in preserving the imperishable principles of our Constitution adjusted to the pressing problems of the day by wise amendments. If the lawyer does not lead and direct this fight, the people, dissatisfied and disappointed, will seek other leaders which will result not only in delay, mistakes and errors, but the reforms will ultimately come. I firmly believe that the lawyer owes it to himself, his profession and to the State to take the leadership and direct the progressive movement along sane and safe lines, and thus preserve to our country an unblemished, incorruptible, stable Judiciary, so necessary to our own peace and prosperity, and so essential to the perpetuity of our national life.

Having touched upon several topics of pending legislation and having made some observations on the sanctity of the Judiciary and problems that the whole Bar should take the lead in working out in a broad sense, I will, with your permission, digress in closing my address and devote the remainder of the time to certain matters peculiar to the needs of the Texas Bar Association in working out the peculiar problems that confront us as Texas lawyers, and while the scope is somewhat narrower than that which has preceded, I will add as a saving clause to my paper, that I am not ambitious to make this address a brilliant legal paper, because that is impossible; but I am ambitious to see the Texas Bar Association develop into the greatest single power for good in this Commonwealth. We have, as lawyers, great responsibility thrust upon us, and are to a degree responsible for the law's failure to keep pace with reforms in every other line of human endeavor. Texas lawyers can and I believe will meet the responsibilities and work out our own remedies in the light

both of history as well as by the rules of common sense, which, after all, are merely the rules of law.

First. Before proceeding further, I will say that the immense size of Texas makes it necessary for its fullest usefulness that our Bar should be larger than other States, and to that end I would suggest that we start an aggressive movement at this time to enlarge our membership. It is by numbers that the full effectiveness of our work can be attained. It is necessary that local Bar Associations should be organized in every county. An active energetic campaign should be conducted to have at least twenty-five local Bar Associations by July 1, 1913. These local associations should be invited to send at least two delegates and two alternates to our next meeting. If this energetic policy could be carried on for a few years, instead of six hundred and fifty, our present membership, we would have fifteen hundred Texas lawyers working with us. To this end I would suggest the appointment by the incoming President of a special committee of five on "Local Associations and Membership," with power to appoint other members of said committee not to exceed thirty-one, or one for each Senatorial district, to report back to the Association at its next meeting the result of their work.

Second. We hear much of co-operation in every line of human endeavor; especially do we notice this in great industrial and transportation corporations. We hear much of the experience meetings and training schools in the immense aggregations of labor and of wealth. Such gatherings certainly serve to get the men acquainted; exchange of ideas, discussion of a common business creates enthusiasm and confidence, and the potential force of such meetings can not easily be estimated.

Why should not the State of Texas with its judicial officers, consisting of approximately one hundred district and appellate judges, adopt a similar policy and make it compulsory for these judges to gather together in convention once a year commencing at the same time and at the same place where the Bar Association meets during the first week in July, for a session of not less than five, nor more than fifteen days, giving them a needed vacation and also paying their expenses, at which time problems and reforms in judicial procedure could be discussed and carried before the Bar meeting and the recommendation of both

meetings could then be taken before the State Convention and urged to be written into the party platform. In this way could the Commonwealth through the favorable action of the Legislature resulting from the recommendations placed into the party platform, secure remedial reforms both in statutory law and judicial procedure that would keep pace with the development along other lines of endeavor, and in this way, as in no other way, could the Bench and Bar co-operate in making effective many of the reforms now so generally discussed and so much needed, and at a cost of not exceeding ten thousand dollars a year, which in the good it will accomplish, is a mere bagatelle to the imperial State of Texas.

Third. Wisconsin has probably made more advance along practical lines of progressive legislation and judicial reform than any of her sister States, by the creation of a "Legislative Reference Department" drafted largely from the faculty of the University of Wisconsin, which department furnishes upon request impartial and skilled assistance in the drafting of bills. Thus the well-informed and also the honest but unskilled legislator who know nothing of law and its forms, could be furnished authoritative and unbiased information on any particular subject or bill before the Legislature. Through this organized non-partisan department, citations and authorities would be available for both proponent and opponent, each having been supplied with accurate and correct data upon which measures could be intelligently discussed with a complete assurance of the correctness of their statements.

This progressive State has also created a "Revision Committee" with a civil service clerical force to search all bills for technical errors. Records of the sections of bills or laws amended are carefully kept so that confusion and duplication may be avoided. Bills are checked at every stage of passage by the clerks of this committee.

They have also added to the above a permanent and expert "Statute Revisor," whose duty it is at the close of each session to issue an annual volume bringing the Statutes to date and systematically to revise them, chapter by chapter, submitting each chapter as revised to the Legislature for approval. The "Revisor" and his assistants are called in by the Governor to ex-

amine all bills for technical mistakes before he signs them. This adds a further check on mistakes and will doubtless make Wisconsin's statute law a model code.

The statute law and court procedure of Texas now need careful and painstaking revision by a commission thoroughly versed in the work and who should receive salaries commensurate with the importance of the work, I would say not less than \$5000 per year. This commission should consist of seven members, five lawyers and two laymen, and should not be selected from or on account of any political affiliation—men of the highest type and unquestionable ability, and in order to avoid even the semblance of politics, I would suggest that they be appointed by a committee consisting of the Governor, the Chief Justice of the Supreme Court, and the President of the University of Texas. They should be given all necessary expert clerical help and plenty of time to do the work well. Our whole system of procedure, both civil and criminal, should be carefully gone over, re-arranged and re-written, if necessary; also such Constitutional changes should be recommended in their report as in their best judgment seem expedient and proper.

To make effective the above recommendations, I would suggest the appointment at this meeting of a committee of five with power to enlarge said committee to thirty-one to take these recommendations before the San Antonio Convention, securing the endorsement by having the same written into the Democratic platform, said committee to follow the matter up by taking the same up with the Governor, requesting that he recommend the same in his message to the Legislature and to still follow the recommendations up by pressing their passage before the Legislature.

Fourth. This is the Thirty-first Annual Convention of the Texas Bar Association. It is meeting today upon the island and in the city that for twenty continuous years threw wide her hospitable doors and entertained many of the founders of this Association and celebrities of the Bar, not only of Texas, but of the Nation. It is fitting, therefore, that at this meeting, although a somewhat tardy recognition, that we should make our return for the year 1912 not merely a notable gathering of lawyers, but that we should make this an historic occasion, build-

ing in our minds and hearts a permanent, as well as memorable mental monument in honor of our hosts at the return of the "Prodigal Son," and in reverential recognition of those early members of this Association who labored so faithfully and earnestly in upbuilding the Bar of this State. I feel, therefore, it is now fitting and proper that the Texas Bar Association do something today that will reflect credit upon the Bar of the State and will be a small beginning toward better and larger things in the future.

I, therefore, recommend for your favorable consideration the passage of a resolution to provide for the establishment at the University of Texas of a scholarship or loan fund of \$2500 in the Law Department, to be known as "The Texas Bar Association Scholarship," the interest only upon said fund to be available, preferably for men during their last two years in law who might need assistance in completing their course, and that this fund can, in the discretion of the committee, be given as a whole or split into several parts and awarded not only upon class standing, but character, ability and necessity, each being considered in making the award. While it is intended to make this a gift, yet it can be understood that in after years, if prosperity should come to the recipient he could repay it, or add to the fund if he so desired, and thus make the fund available for other needy students, but it is to always be known as the "Texas Bar Association Scholarship."

The Award Committee to be a permanent one and should consist of the Dean of the Law Department, the President of the University, and the Chief Justice of the Supreme Court of Texas.

Gentlemen of the Bar Association, I am sensible of my failure in not being able to write you an interesting paper on noteworthy changes in our law, and thank you for the kind, indulgent, as well as patient manner in which you have listened to what I have had to say, but I especially ask your thoughtful consideration of my recommendations.

Now, in closing, I would urge upon the lawyers of Texas, while there is yet time, to join hands and make of our Association a power for good and the champion of sanely progressive procedure, and of wisely wholesome legislation. Let the lawyers of Texas be advocates always of a broad, liberal and progressive

policy of speeding the cause we represent, frankly acknowledging that the law's delays are its greatest weakness and its greatest reproach, and realizing with sadness in our hearts that it is but too true that "Justice delayed is often justice denied."

Let the Texas Bar Association stand for the prompt and effectual administration of the law, for it is by these things alone that we can hope to impress upon the minds of the people the affection, esteem, and reverence towards the government so necessary to their peace, prosperity and happiness, and so essential to its strength, growth and perpetuity.







Albert W. Dyer

## THE UNREST AS TO THE ADMINISTRATION OF LAW

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ANNUAL ADDRESS BEFORE THE TEXAS BAR ASSOCIATION AT GALVESTON,  
JULY 3RD, 1912

BY

ALBERT W. BIGGS, OF MEMPHIS, TENN.

*Mr. President, Members of the Texas Bar Association, Ladies and Gentlemen:*

At the outset I desire to express my great appreciation of the compliment which the invitation to deliver the annual address before this Association implies. And while the honor you have thus conferred upon me is far beyond my deserts, it is well within my gratitude.

With all that concerns the citizenship and prosperity of your great State, a Tennessean has more than a passing interest, for so many of our citizens have made their homes with you, that, travel where you may in this great empire, you meet on every hand those who either were once Tennesseans, or whose forbears lived in Tennessee. Indeed, the tide of immigration set your way before Texas was one of the States of the Union.

It was in Jackson's time, there came to Texas one who had achieved distinction as a soldier under "Old Hickory," and was later a Congressman and twice a Governor of the Volunteer State. Heartbroken because of domestic infelicities, he resigned the latter office and sought solace by living for a while with the Indians, but a cycle of savage life could not satisfy the indomitable spirit of Sam Houston, so he cast his lot with these people in their fight with Mexico for freedom. At the decisive battle of San Jacinto, he led her troops; and, after independence was secured, such was their gratitude for his services and their confidence in his ability that he was made President of the republic, and when the Lone Star took her place in the firmament of the Union, he was her Senator and later her Governor. His memory is kept green by a monument which will be as enduring as his services merit—the queen city of Houston.

I recall also another citizen of our State, a typical backwoodsman, picturesque in dress and manner even in those days, who,

like Houston, had been honored by the people of his own State, but who was attracted by the opportunities of this southwestern empire. He came not as a drone, but firm in the belief that a country that is worth living in is worth fighting for, and, at the Alamo, Davy Crockett gave his life for Texas.

I have not the time to catalogue others who left our own fair State to make their home in this land of sunshine and flowers and who have merited and received honor and position among you, to say nothing of the thousands whose lives have been spent in the quieter walks of life, and who, while to fame and fortune unknown, by reason of their high ideals of citizenship, their sturdy manhood and exalted womanhood, have contributed in no small degree to make your State what it now is. I have referred to these facts as a justification, if one be needed, for my interest in Texas and Texans.

At this time one invited to deliver an annual address before an association of lawyers has his subject selected, for it would be hardly appropriate to speak other than of that unrest as to the uppermost in your mind and deserve the thoughtful consideration of the law and the proposed remedies, which are the concern of every patriotic citizen.

While my subject is thus selected in advance and that which is usually half the labor of the preparation is removed, yet the importance of the subject, the fact that so much has already been written and spoken in regard to it, makes it doubly difficult, for I feel that all has been said that could be said, and "said over again after."

In what I shall say today, both as to the prevailing unrest and as to the proposed remedies, I shall discuss neither politics nor parties, for the subject involves more than either. In the last analysis the proposed remedies present the question as to whether constitutional government in these United States has run its course.

I shall speak not as a lawyer deeply interested in the profession of the law, proud of its past and hopeful of its future, speaking to lawyers imbued with like sentiments, but as one citizen to others—all the beneficiaries of the privileges of a common country, justly proud of its glorious history, profoundly concerned in the perpetuation of the liberties which it has secured,

and anxious that its future may accomplish more than its past. Indeed, the well-being of our profession and the continued prosperity, liberty and happiness of the people are indissolubly associated, for the profession, in America, is stamped with a public use.

In no other country have the lawyers had such an important part in its history as in this. Of the fifty-six representatives who signed the Declaration of Independence, twenty-six were lawyers. They were numerous and influential in the Constitutional Convention of 1787 when this nation was born. In its growth and expansion from thirteen sparsely settled States along the Atlantic seaboard to its present position as a world power, they have had the most important part. As we have in this country no governing class, no set of men who are trained for public life and service, it is from the bar that the greatest number of our officials and leaders have come.

Indeed, one branch of the government, the judiciary, has been of necessity exclusively recruited from its members. Nineteen of the twenty-five presidents are lawyers, and a majority of the executives of the several States have come from their ranks. In the Legislative Department, State and National, they have outnumbered any other profession or class; and it is not too much to say that they have been the dominant and controlling factor in that branch of the government.

For the first century of our national life the lawyers were the leaders in public life. They shaped public opinion and controlled the policy of the States and Nation. So it is frequently and truly said that for a hundred years we had a government by lawyers.

In the last few decades, the lawyers as a class have ceased to be the leaders of public opinion and the dominant force in our public life they were during the first century of our existence. This has been brought about by many causes; in some degree, by the fact that the leaders of the Bar have found that the returns from the profession are larger than those from public service; perhaps to a greater extent, by the vicissitudes of public life and the frequent changes in the personnel of our officials; likewise changed political conditions and the advent of the boss system in politics has had its effect. Then, again, the disinclination of clients to entrust their business to the lawyer in politics has contributed

to this result. I do not mean that there is a dearth of lawyers in public office, nor that some of our most eminent lawyers are not to be found in the service of the State, but my meaning is that the Bar as a class does not take the interest in public affairs it did, nor are the lawyers the leaders they were.

I believe that the Bar is as patriotic as it ever was. I do not think that large fees and big retainers have dulled its patriotism. I believe that it will be found, when conditions so demand, that its members will devote themselves to the public good.

In my opinion conditions now exist which call us to service and to arms, and demand again of us our counsel and leadership. We are facing a crisis in our government, one which involves a departure from those principles under which for a century and a quarter we have lived and prospered.

As a people we are so accustomed to big things that we have become addicted to hyperbole of speech. The very bigness of our country, its wonderful natural resources, its great and growing wealth, its marvelous progress, outstripping in its fruition the prophecies of the past, its potentiality for greater things in the future—these have made us as extravagant in our statements as we are prodigal in our expenditures.. So it is that whenever there is proposed a change in our laws, it has been said that the consummation will be either ruinous to trade and business, as well as destructive to liberty, or the converse; and it has become trite to say that anything presages either great good or lasting evil. Our country has withstood so many storms, and yet always ridden on the crest of the wave, that I hesitate to say that any new theory in government would be unwise or would result in only evil to the body politic.

We live in an era of change, but also one of constant advancement, so that, in this year of grace, in all that makes life worth while, collectively and as individuals, we are in the forefront of the peoples of all times. We should not forget, however, that our century of progress has been under the Constitution. Radicalism is not always progress. When, therefore, it is proposed to abrogate any of the safeguards of our liberties, even though it be urged in the interest of greater liberty, the proposition should be carefully examined. We should follow the advice of Davy Crockett, "be sure you are right, then go ahead."

From what I have said do not understand me as a stickler for

the old order. I agree with Bentham that so far as experience is concerned we are the most experienced people of all times. As Dr. Holmes put it, "we are the omnibuses in which all of our ancestors ride," and as expressed by Tennyson, "the heir of all the ages." A thing is not necessarily good because it is old nor bad because it is new. Wisdom did not die with the fathers, nor was it born with us. I give due honor and respect to the framers of our government, but we should have a greater knowledge upon the subject of government than they had. I say should; I do not say that we have. That is true when by studying the history of civilization and of government, we have the light which they had, and, in addition, the benefit of their experience and the result of their experiments. All the problems of government were not solved by them. The onward march of civilization did not reach the frontier of individual rights when they founded the Republic on the Constitution. We have a duty to perform, and it will not be well done if we content ourselves with preserving for posterity that which we received as our birthright; for then we would be like that wicked and slothful servant who wrapped his talents in a napkin and preserved them for the coming of his lord. On the other hand, while our duty is to enlarge and enrich our inheritance, we must not be unmindful of the fact that it is possible to squander it. Long ago it was said that "eternal vigilance is the price of liberty," and, in more than one instance, a people have traded their birthright for a mess of pottage.

My subject assumes that there is an unrest as to the administration of the law, and I need not, in this distinguished presence, undertake to justify that statement. Whether that unrest is well founded in fact may be a matter of division. Certain it is that in the last quarter of a century many of our most distinguished members have insisted upon reforms of procedure and substantive law as essential to meet the requirements of our advancing life.

With this action by Bar Associations and by conservative and distinguished members of the Bar it is not surprising that we find among the laymen the idea that the law has not kept pace with other professions and with the advances which have marked other walks of life. We hear that technicalities are permitted

to defeat justice; that the law's delay of which Hamlet lamented is yet an evil from which we have not escaped, and that we apply out-worn philosophies to new conditions. Constant comparison is made by the public of the trial of criminal cases in England and America. I am not overdrawing the picture when I say that a man can take a trip around the world and not travel on excess fare trains and steamers while a jury is being selected in one of our large cities to try a criminal who has committed some atrocious crime, provided he has sufficient wealth to employ able counsel. Those who advocate radical changes in our form of government say that the rights of men and property are measured by the rules announced centuries ago, and charge that for decisions of cases we hark back to the Middle Ages for precedent. We are accused of stifling justice with a legal formalism of the dead past. When the layman considers that no doctor treats a patient as the most eminent of his profession did some fifty or one hundred years ago, and that in every branch of business radical changes have been made, he jumps to the conclusion that a profession which relies upon the past has been outrun in the race of civilization and any proposed change meets with his support.

The lawyer has a duty to perform just here.. He knows that which the layman does not, or does not consider; that is, that the solution of the problems of the law can not be worked out in a laboratory; that the right of a case which depends upon testimony cannot be accurately determined by any chemical test, and the law which seeks to administer between men equal and exact justice can do no better than to approximate it; for is not justice an attribute of God which we can not hope perfectly to administer? The layman should be told that no advance in science can change the maxims of equity and the principles of justice, which are eternal and unchangeable; that in the abstract what was true at the beginning of time is true now and will be until the end; that what was false then is false now and will be always. The Decalogue and the Sermon on the Mount are not out of date because they are old, but remain as rules and guides of our life and conduct. It is true that the rights of individual men are not the same they were yesterday, nor will they be the same tomorrow as they are today. They will constantly change as civilization progresses. But the rules, the maxims and the princi-



ples by which right and wrong are to be determined must be stable and such as have stood the test of time and experience. Without such stability of decisions, business would stagnate, property become insecure, and ruin inevitably follow.

Thirty-five years ago the American Bar Association was organized. Since then State associations have been formed in nearly all of the States of the Union. The objects of these Associations are to promote cordial intercourse among the members of the profession; to take note of the defects of our jurisprudence that they may be remedied; to examine the administration of justice that it may be promoted; to secure in the several States uniformity of laws in matters of general interest; to uphold the honor of the profession, and generally to adopt those means and methods which will sustain the majesty of the law and secure its speedy and impartial enforcement. As a result much has been accomplished in the way of judicial reform. I believe that the standard of the Bar has been elevated; that the Bench has been strengthened; that procedure in many States has been simplified; that cases are not so often reversed because of technicalities which do not affect the merits, nor infringe on the defendant's right to a fair and impartial trial; and I am sure that each year a larger number of States have enacted the recommendations of the uniform law commission, thus simplifying and making the same the laws of the several States upon questions of general interest.

I do not mean to say that all has been done along these lines that should have been done, nor that could have been accomplished had we set ourselves to the task. I therefore can not agree that the present unrest is without cause. However, because there is a leak in the roof we should not tear down the house, and because there are defects in the administration of law, I can not yield myself to the proposition that our system of jurisprudence should be destroyed.

Whatever may be the defects in the administration of law, they can not be cured either by making the judges subservient to a temporary majority of the people, or by taking down the bulwarks which secure and protect the liberties of the individual.

The remedies which are now urged to cure these and other al-

leged ills of the law are the recall of judges and judicial decision.

The exponents of the recall of judges say that the judges should be the servants of the people, responsive to their desires and subject to be recalled or dismissed, not only for improper conduct, or for cause, but if their decisions, for any reason, or no reason at all, fail to meet the approval of the temporary majority.

Those favoring the review of judicial decisions say that the law as now administered puts "the pedantry of forms above the vital needs of our life;" that as the people in this country possess the sovereign power, the courts should not be permitted to annul any act of the Legislature, even though it oversteps the boundary of legislative authority, provided a majority of the people at the polls shall decide in its favor, constitutional limitations and the Bill of Rights to the contrary notwithstanding.

The proposition may also be stated that it is now proposed to endow the Legislature with supreme power, untrammelled by any restrictions, and their acts shall be the supreme law of the land.

Within the past decade or so, the doctrine of the initiative and referendum had its beginning, so far as this country is concerned. It received its support upon the theory that the Legislature could not be trusted with the passage of laws, but that the people themselves should have the right to propose and pass, or veto, legislation. It was a protest against the character, not the quantity, of the laws which the annual and biennial legislatures dumped on the several States. It is a remarkable fact that nearly all the leaders in the crusade for the recall of judges and judicial decisions are stanch supporters of the initiative and referendum.

It is a matter which should be noted in passing that the legislative branches of the nation and the States are more in the hands of the people than any other department of government. Their term of office is short. They are elected either annually or biennially. They sit for about three months. A majority of each assembly are new members. Although the law-making body has been and is thus in the control of the people, yet of no department of our government has there been so much, so general, and so widespread complaint. It would thus seem that a short

tenure of office has not proved altogether successful. Yet the recall of judicial decisions as now proposed will give greater power to the Legislature, for it will take away the restrictions which the wisdom and experience of ages have placed upon their power.

Passing of less importance, because not so radical nor far-reaching in its effect, the initiative and referendum, it becomes the duty of the American lawyer to study the proposed recall of judges and judicial decisions, to analyze their meaning and forecast as well as can be their effect. This should be done with an open mind, anxious to reach the truth, so that if it should be determined that our judges should be responsive to the popular will, that they should feel the public pulse and be alert to the relative strength before the people of the parties litigant, that should be done. And if it should be thus decided, then no longer should Justice be represented as a woman blindfolded, who knows neither suitor nor sued, but she should be represented with her eyes open and her ear to the ground, that her decisions may register, not what is the right or the wrong of the particular cases, but that which is the will and the pleasure of the majority of the State.

Some years ago, an attempt was made by the legislature of Tennessee to remove a certain judge from office under a section of the Constitution of Tennessee authorizing the removal of a judge by a concurrent vote of the two houses of the general assembly. The resolution of removal negated the existence of any cause of removal personal to the judge or affecting the administration of his office, and recited as the sole cause for his removal a superfluity of judges and the necessity to reduce their number and judicial expense to subserve the public welfare.

The Supreme Court denied the right to thus remove a judge except for cause, and after reviewing the debates in the convention leading up to the adoption of this provision, as well as construing the provision, the court said:

"If the power of removal conferred by this section is arbitrary and unlimited, a judge might be removed on account of his religion, his politics, his race, or because he had declared unconstitutional a particular enactment of the legislature."

As to the recall of judicial decisions, if we should determine

that constitutional government has run its course and that the bridle should be taken off the Legislature, then we of the Bar should lend our efforts to secure this. If, on the other hand, we believe either to be destructive of the independence and integrity of the judiciary, or of our liberties, we should expose their fallacies and thus secure their defeat before the people, for they alone can either adopt or reject, and on their sober and considerate judgment we must rely, and in which I have confidence.

Before an association of lawyers familiar with the history as well as the theory of our institutions, it seems useless to dwell upon either; but the effect of the review of judicial decisions and the recall of judges can not be presented without a short statement of the genesis of our government and an analysis of the provisions of our fundamental law.

Liberty is the child of law. It is the result of a growth, not the creature of fiat. In the beginning of English history, the king had practically the sovereign power, and the individual amounted to little. We have grown from a half savage people, thus ruled, to our present flower of civilization, with the people as the repository of all sovereignty. Each right wrung from king or lord was the vantage ground for securing another. From time to time these rights have been reduced to written form and now constitute our great charter of liberty—the Bill of Rights.

It is interesting to note that the provision which secures the life, liberty and property of the citizen against the encroachments of arbitrary power, is the one which it is now proposed to change. This may be called the foundation stone of English liberty, for it was the chief provision in the Magna Charta that was wrung from King John in the thirteenth century.

Along with this struggle there grew up a system of law which has been an important factor in the advancement of mankind. It fought no bloody battles, it has no popular heroes, and its achievements are unrecorded in song or story. I refer to the common law. That law which first and foremost had in view the protection of the rights of the individual citizen, which first conceived and dealt with him as an active atom in the great mass of humanity, which treated him as one in whom there inheres certain powers which he was entitled to assert and make effective, not only against other citizens, but all others together. Thus

we say that a man's house is his castle; and, it matter not how humble or lowly, against his wish or will, without warrant of law, the king and his army dare not enter. While recognizing the individual as such, it likewise acknowledged the State as the active or sovereign power of the whole community and entitled to the obedience and service of the individual whenever it did not trespass upon those rights legally secured to him. Under that system liberty was not license, nor government despotism. For while on one hand the common law protected the individual against tyranny, that is, the absolute and capricious will of the sovereign; on the other hand, it protected him against anarchy and disorder, that is, the unrestrained and unlimited exercise of the will and pleasure of other individuals.

The American Revolution merged the sovereign with the individual, but it did not destroy the individual, or his rights. It was the beginning of written constitutions, which are the instruments by which the people, the repositories of sovereignty, delegate to certain agencies the powers of government. In establishing our government, the fathers made three separate and co-ordinate branches: the legislative, the executive and the judicial, and were careful to provide that these departments of government should be kept separate and distinct. They deemed this to be essential to liberty. Hamilton said: "For I agree that there is no liberty if the power of judging be not separate from the legislative and executive powers." Mercer said: "It is an axiom that the judiciary ought to be separate from the Legislature, but equally so that it ought to be independent of that department." In the constitutional convention, the fear was frequently expressed that the legislative branch, if unrestrained, would absorb the powers of government, so we find Madison, Wilson and others favoring a council of revision. Madison, in speaking of the legislative branch, said that experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. He declared that this was the real source of danger to the American Constitution, and urged the necessity of giving every defensive authority to the other departments that was consistent with republican principles. Gouveneur Morris stated that the Ephori at Sparta had become in the end absolute in power.

Though our government is based on the fact that the sovereign

power is in the people, the individual is protected. The government was established for his benefit—that his life, liberty, property and the pursuit of happiness might be secured. Hence, we find limitations upon the exercise of power.

The omission of a Bill of Rights from the Constitution came near defeating its adoption ;and it was only ratified when it was ascertained that amendments securing these rights would be made.

The right of the judiciary to declare an act of the Legislature which exceeds its authority unconstitutional and void is the only safeguard which the people have against this arbitrary power, which the fathers felt the legislative branch would draw into itself unless restrained. That right is thus stated by Hamilton in the *Federalist*:

“There is no position which depends on clearer principles than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men, acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.”

This right does not by any means suppose a superiority of the judicial to the legislative power, but as stated by the same writer:

“It only supposes that the power of the people is superior to both, and that where the will of the Legislature declared in its statutes stands in opposition to that of the people declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental.”

To permit an act to become a law, notwithstanding that it invades such rights secured to the individual citizen by the Constitution, means nothing more nor less than taking the bridle off the Legislatures, and making the capricious wish of any temporary majority of the electors the supreme law of the land. It is the destruction of liberty and the return to despotism.

I would not weary your patience by a review of the safeguards

to private rights and personal liberties which would be thus affected, but I ask you to reflect that there would then remain no security for the freedom of religious belief and its exercise, nor of speech and of the press; and the right of petition and assemblage would be a matter of legislative favor rather than of constitutional right. So, also the security of the citizen against unreasonable searches and seizures; the necessity of indictment or presentment before arrest and trial, and, after arrest, against involuntary incrimination or excessive bail; also of a speedy and impartial trial in the vicinity where the crime was committed; against repeated trails for the same offense, and of excessive fines and cruel and unusual punishment; all these would be within the power of the Legislature to grant, or to deny. The property, life and liberty of the citizen would no longer be inviolable, and bills of attainder, ex post facto laws, legislative confiscation and judgments without a hearing would soon become the order of the day. Things grow by what they are fed on, and one act of arbitrary power would be followed by another, until a despotism would result. Dr. Franklin in the convention remarked: "Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice—the love of power and the love of money." The history of mankind affords many instances of the growth of arbitrary power. They are familiar to the student of history and need not be stated or reviewed.

To give to the Legislature or to a temporary, if transient, majority of the electors, arbitrary power over the life, the liberty and the property of the minority is (to quote from Judge Neil in *Malone vs. Williams*, 118 Tenn., 426) such as "can not be upheld in a free country. No man is wise enough or good enough to be vested with arbitrary power over the property of his fellow citizen." It is such power that no good man would desire to have and as that no bad man or set of men should be entrusted with. As said by Mr. Justice Matthews in *Yick Wo vs. Hopkins*, 118 U. S., 356:

"But the fundamental rights to life, liberty and the pursuit of happiness, considered as individual possessions, are secured by the maxims of constitutional law, which are the monuments showing the victorious progress of the race in securing to men

the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be a government of laws and not of men.' For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

What boots it to you or to me whether we hold our rights subject to the arbitrary power of one or many, of a ruler or of a majority?

Because some act of the Legislature, conceding it one for the benefit of the community, is held unconstitutional, is no reason why we should abandon constitutional government, or surrender our charter of liberty.

The leading exponent of this doctrine of the recall of judicial decisions in his speech in Carnegie Hall declared:

"I ask that you, here, you and the others like you, you, the people, be given the chance to state your own views of justice and public morality, and not sit meekly by and have your views announced for you by well-meaning adherents of outworn philosophies, who exalt the pedantry of formulas above the vital needs of human life."

The judges are human, and it can not be expected that they will not err. They have made and will continue to make mistakes, but such is their training and such their habits of thought, that these have been, as a rule, in the interest of the rights of the individual, and not against his liberty. This is as it should be.

It is very easy to say, that the people should have a chance to state their own views of justice and public morality, but is it true that under the Constitution they have not the right so to do, and have not so done? It is not true that their views upon these questions are announced for them "by well meaning adherents of outworn philosophies," if the judiciary is referred to. The courts have repeatedly declined to do what is charged in the above quotation.

As an indication of the policy of the courts not to give a scholastic interpretation to one or another of the great guarantees of



the Bill of Rights, Mr. Justice Holmes (in *Bank vs. Haskell*, 219 U. S. 105) said:

"In answering that question we must be cautious about pressing the broad words of the Fourteenth Amendment to a dryly logical extreme. Many laws which it would be vain to ask the Court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the law-making power."

Our courts have not failed to recognize the constantly advancing civilization and the changes which have taken, and are taking, place, in the social and economic conditions. As stated by Mr. Justice Holmes, they have been cautious not to press the limitations of the Constitution to a dryly logical extreme. For so far as the police power is concerned, the same learned judge, in answer to the inquiry as to where the courts were going to draw the line limiting this power, declined to say, but added, "with regard to the police power, as elsewhere in the law, lines are pricked out by the gradual approach and contact of decisions on the opposing sides."

By this method of interpretation the Constitution has been found sufficiently elastic to meet conditions unknown to, and not dreamed of by, its framers. The provision giving to Congress the right to regulate commerce between the States has been construed to confer the power on Congress to regulate the instrumentalities used in such commerce, the equipment of cars, and to define the right of employers and employees engaged therein.

Many illustrations might be given showing how the dividing line between what is and what is not constitutional has been changed, always advancing and in the interest of the rights of the many as against the few, and of man as against property, but I have neither the time nor is this the occasion to give them. This growth may well be illustrated by a glance at the decisions of the Supreme Court of the United States upon what is a rea-

sonable and what an arbitrary classification. In the case of *Railroad vs. Ellis*, 165 U. S., 157, an act of the Legislature of Texas imposing an attorney's fee not to exceed ten dollars in addition to costs upon a railroad corporation, failing to pay certain claims within a specified time after their presentation, was held unconstitutional in an opinion delivered by Mr. Justice Brewer. It is a far cry from that case to some of the recent decisions of the court. The march of the court from the decision in the *Ellis* case, where the act was held palpably arbitrary to its present position may be marked by the decision in *Railroad vs. Paul*, 173 U. S., 404, where the court upheld a penalty for failure to pay wages when an employe is discharged, though the act was directed solely against the railroad company; *Atchison, Topeka & Santa Fe R. R. vs. Matthews*, 174 U. S., 96, where a provision for attorney's fees in case of a fire loss directed against one class of corporations, was sustained; *Fidelity Insurance Co. vs. Mettler*, 185 U. S., 308, where a provision for attorney's fees against health and life insurance but no other insurance companies, for failure to pay a loss within a specific period, was held to be a reasonable classification; *M., K. & T. R. R. Co. vs. May*, 194 U. S., 267, where Chapter 117 of the Statutes of Texas for 1901, imposing a penalty against railroad companies for permitting Johnson grass or Russian thistles to go to seed upon their right of way, was upheld. In the opinion in the latter case, Mr. Justice Holmes said:

"Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

In view of these declarations of the highest court of the land, is it fair to speak of the judges as well-meaning adherents of outworn philosophies or as those who place the pedantry of formulas above the vital needs of human life?

The independence of the courts is essential to this in any country and under any system of government, but, as said by Hamilton:

"It is particularly essential in a limited Constitution. By a limited Constitution I understand one which contains certain

specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this all the reservations of particular rights or privileges would amount to nothing."

If the people should be given the power, as contended for, as to the recall of judges, it is evident that the judiciary would no longer be an independent and co-ordinate branch of the government, but a mere servile dependency. The distribution of the powers of government, as well as the vesting in separate departments, would be an idle ceremony. Said Thomas T. Marshall:

"We have incorporated certain permanent and eternal principles in written constitutions, and erected an independent judiciary as the depository and interpreter, the guardian and the priest, of these articles of freedom."

When we consider the separate branches of government we are at once struck with the thought that of the three the judiciary is, from the nature of its functions, the weakest. The executive not only dispenses the honors, but holds the sword. The legislative commands the purse and prescribes the rules by which the duties and rights of every citizen are to be regulated. While "The judiciary, on the contrary, has no influence over either the sword or the purse, no direction either of the strength or the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither *force* nor *will*, but merely judgment, and must ultimately depend upon the aid of the executive arm for the efficacious exercise even of this faculty."

Therefore the judiciary must be so organized as not only to be above popular clamor, but to be able to act regardless of the fear or favor of the majority. It must decide that which is right, not what is popular; for only by so doing can it have the abiding confidence and support of the people. As in its decrees it approaches those judgments which are "true and righteous altogether" can it find lasting support.

This does not mean a government of stagnation, but it means one of orderly growth. It means a growth and a development

with respect to the experience and the wisdom of the past, but with confidence in the future. When we cut loose from the wisdom of our fathers and the experience of history, we sail upon a sea without chart or compass, subject to every wind that blows and to every caprice of fortune. The only instance in history where that was attempted is not one that commends itself to our judgment. When the French people enthroned "Liberty, Equality and Fraternity" they turned a deaf ear to the teachings of the past, even going to the extent of making out a new era and making a new date line. It was not long until the excesses of one majority had been succeeded by another, until that republic, whose history is written in blood and punctuated in crime, fell an easy prey to the absolute power of a military despot.

There is in the United States no question of greater concern than that of the government of municipalities. We are now making efforts by trying different forms of municipal government to wrest the control of the cities from political bosses, but so far without entire success. In view of these facts, can any proposition be conceived that is more at variance with our institutions than that the safe-guards of individual rights should at any time be set aside by an enactment of the Legislature, and that such law shall not be declared unconstitutional if a majority of the people to whom it applies and who vote in an election called for that purpose shall declare in its favor? It matters not how that temporary majority may be secured. If the law applies to some city, whether by the coercion by local officials or bosses, the debauchery of the electors at the polls, such majority shall have the power to determine that their own morality and their own idea of justice shall be the supreme law of the land. That the act in question is confiscatory of property rights, that it takes the form of a bill of attainder, or an ex post facto law, that it suspends for a part of the people the right of habeas corpus, or denies them the right of petition or assemblage, or subjects them to unreasonable searches and seizures, all that is of no consequence. Likewise, it is not of moment how contrary to the idea of morality of people reared in the fear of God the law may be, a temporary majority would have the power to make it the supreme law of the land.

But these are the questions which are now presented for our

thoughtful consideration and deliberate action. That they must be opposed and defeated you will probably agree, but we must not stop there. We, of the Bench and the Bar, must continue, but with redoubled efforts, to so reform our procedure as that our laws may be administered so that every person shall have a certain remedy in the law for all injuries or wrongs he may receive in his person, his property or his character; that he shall obtain justice freely and without purchase, completely and without denial, promptly and without delay, "conformably to the laws."

All any suitor is entitled to have, or should desire, is that his case shall be decided on the facts, under the law, by an impartial judge. He is entitled to this. He will be satisfied with nothing less. Of course, some cases will be decided wrong, but that is to be expected, for judges are but men after all. So long as they are honestly determined, we can stand mistakes of judgment. How different it would be if the judiciary should cease to be impartial? Any change that would destroy their independence, that would make them time servers, or trimmers, would produce results which we can contemplate only with horror. There is no necessity for any such radical departure. The Bench was never occupied by abler, or more conscientious, men than today.

We should elevate to the Bench men of wisdom, experience and character. Such compensation should be provided as will attract the leaders of the Bar: and elevation to a judgeship should be the highest honor to which a lawyer could aspire. And it should only be attained here as in England, after a successful career at the Bar. Yet we could not hope to do this if judges are subject to be recalled at the pleasure of a majority, or to go before the people to defend a decision. The ills we have now can be and are being remedied. The Bar is awake to the conditions, and such reforms as will remedy them will be made. This will take time, for, at last, where the law is deficient, the remedy is by legislation. The judges can only declare the law, not make it. But even though nothing should be done, it is far better to permit the law to remain as it is, with all its real and imaginary defects, than to adopt either of the proposed remedies.

Wherever error is established we should strike it down and en-

throne right. If corruption or incompetency has anywhere been elevated by accident or design, we should provide for its speedy and complete removal. This can and should be done under the Constitution, "conformably to the laws."

## THE RECALL OF JUDGES

BY

HON. THOS. H. FRANKLIN

OF SAN ANTONIO

Readers of that mournful, gloomy but powerful novel, "The Hunchback of Notre Dame," will recall the scene in the Archdeacon's cell when standing with an open book before him he looked out of the window on the dim outlines of the church and said, "The one will kill the other." From this expression Hugo draws the meaning that whilst in the past men had expressed their thoughts, their sentiments and aspirations partly through architecture, in the future they would express them through the printing press and declares that "all civilization begins in theocracy and ends with democracy." We have almost reached the age of democracy. The book is no longer in the hands of the few but is read by the many. The power of the few to control is passing away. The best public thought is not with the educated few, but with the educated many. As education becomes general, morality advances, and the directions in which government shall act become more numerous and the doctrine that men can not be made honest or moral by law takes on a new meaning and its limitations must be fixed by an educated dominant morality and not by an uneducated desire for freedom to be immoral. Whenever, therefore, there is a demand from any considerable portions of the people of our Republic for the correction of an alleged evil and a method advocated for such correction, a duty rests on each of us to determine whether the evil exists and whether the remedy suggested is necessary, proper and adequate, and to discuss it fully and dispassionately with a view to arriving at a correct determination as to its necessity, propriety and sufficiency. If the evil exists then we should determine whether it is one necessarily incident to our Government, and of such a character that it can not be corrected or avoided without a fundamental change in our Government's form and a disregard of the principles upon which it is established. If the evil can not be remedied without such change,

then we as a people must decide between the continuance of our Government with an incident evil or a radical change in form and principle for the purpose of ridding ourselves thereof. Such a question is a momentous one and the wisest and bravest and best may well approach its consideration with the gravest concern. Our Government is both a creation and a growth, and into its birth and past life have entered the thoughts, the affections and the wisdom of many generations of men, and it has been baptized and re-baptized in the blood of patriots and handed down to us as the best work of the generations who have preceded us, and any radical change in its form or any abandonment of any of its principles should not be made without due consideration and upon pressing necessity.

In considering the recall of judges, therefore, the vital question is, can that method of controlling the judiciary be adopted by us without such radical changes as would be destructive of some of the fundamental principles of government under a written Constitution? To determine this question, we must ascertain what are the evils which are alleged to exist and to necessitate a procedure for the recall of judges from office by popular vote before the expiration of their terms. If the complaints against our judiciary be analyzed, they may be expressed in detail about as follows:

1. That some of the judges are corrupt;
2. That some of them are ignorant;
3. That some of them are controlled by some of the large corporations;
4. That the administration of the law is unduly delayed;
5. That legislation adopted upon the peoples' commands has been wrongfully held to be unconstitutional and therefore void and the peoples' will thus defeated.

These several complaints may all be classified under one general head as charges against individual judges, and not as attacks upon our judicial system, as such, unless it may be said that delays in the law's administration are due to defects in procedure, and not to the negligence or misconduct of judges. If such delays result from defective laws regulating procedure, of course the defects may be corrected by appropriate legislation and the radical remedy of recall is unnecessary. I shall, there-



fore, consider the several complaints as charging that some judges are corrupt, some ignorant, some improperly controlled, that some intentionally delay the administration of the law and some knowingly decide some constitutional question erroneously. So considered, it may be admitted, for the purposes of this paper, that the complaints are, to a limited extent, well founded, and the question is naturally suggested, have the people at present any efficient remedy for such misconduct? In discussing this question, I shall consider only the remedies found in the Constitution of this State, as it would extend this paper to undue length if I undertook to review the Constitutions and laws of other States and of the United States. Speaking broadly, however, it will be found, I am quite sure, that the remedies in all of those governments are practically the same as those in our State, at least in so far as they relate to the matter of impeachment, and my argument will not lose any of its material force by the limitation I am placing upon it.

Under the Constitution of this State, judges of the Supreme Court, the Court of Appeals and district courts may be impeached by the House of Representatives and tried on the impeachment by the Senate. Impeachable offenses are not specifically defined, but the general rule is that they must be high crimes or misdemeanors. This expression is not to be taken in its common law but in its broader parliamentary sense and interpreted in the light of parliamentary usage. In this sense "it includes not only crimes in which an indictment may be brought, but grave political offenses, corruption, mal-administration or neglect of duty involving moral turpitude, arbitrary and oppressive conduct and even gross improprieties by judges and high officers of State, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute."

The Constitution further provides that "any judge of the district courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression or other official misconduct or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business in his courts,

may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less than ten lawyers practicing in the courts held by such judge and licensed to practice in the Supreme Court. Such presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of creditable witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable."

The Constitution likewise provides that "the judges of the Supreme Court, Court of Appeals and district courts shall be removed by the Governor on the address of two-thirds of each house of the Legislature for willful neglect of duty, incompetency, habitual drunkenness, oppression in office or other reasonable cause, which shall not be sufficient ground for impeachment; provided, however, that the cause or causes for which such removal shall be required shall be stated at length in such address and entered on the journals of each house, and provided further, that the cause or causes shall be notified to the judge so intended to be removed and he shall be admitted to a hearing in his own defense before any vote for such address shall pass, and in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house respectively."

These Constitutional provisions provide methods for removal from office of any judge who is incompetent, corrupt, wilfully fails in the performance of any of the duties of his office or intentionally renders improper judgments. If these remedies are used the people will secure full protection against a corrupt or incompetent judiciary, unless it be maintained that our Legislatures are all corrupt, and as well our Supreme Court, and if this can be maintained, then our civilization is a failure.

The Constitution provides that judges shall be elected at stated times and for certain terms, vacancies between elections to be filled by appointment by the Governor. When a judge is so elected or appointed, he is a chosen public servant of the people, subject to be removed during his official term through the instrumentalities by them provided whenever he has by his con-

duct given cause for such removal. Before entering upon the duties of his office, he must take an oath that he will faithfully and impartially discharge and perform all the duties en incumbent upon him as judge according to the best of his skill and ability agreeably to the Constitution and laws of the United States and of this State. His removal for official misconduct therefore convicts him of an offense, deprives him of the property he has in his office and in his reputation, brands him as a violator of his solemn oath and sends him back to private life dishonored and disgraced and, in case of impeachment, disqualified from holding any office of honor, trust or profit under this State.

The "Bill of Rights" in our Constitution declares that "no citizen of this State shall be deprived of life, liberty, property, privileges or immunities or in any manner disfranchised except by due course of the law of the land." The people who made that declaration knew what was meant by giving to the citizen the protection of the "due course of the law of the land." That phrase not only expresses one of the fundamental principles of our government, but of all free governments—more than that, it expresses a great basic principle of Anglo-Saxon civilization. It contemplates that no member of society can be deprived of life, liberty or property without a hearing before some appropriate tribunal.

It is apparent that when the provisions for the impeachment or removal of judges were put in the Constitution the above quoted section of the "Bill of Rights" was well understood and hence their requirements that charges should be preferred, a trial had and judgment rendered in all proceedings thereunder.

It is equally true that the people who adopted the Constitution knew what was meant by a trial—that it was a hearing held in accordance with certain generally recognized or adopted forms of procedure at which the parties could be present in person or by counsel and at which all oral testimony must be given by witnesses under oath and subject to cross-examination. If for the method of removal of judges by impeachment, motion or address where they are guilty of misconduct authorizing such removal, there should be substituted a recall by a vote of the people, such recall would constitute a judgment that the judge recalled was guilty of the offenses charged against him and his guilt should

not be determined except by "due course of the law of the land," if our Constitution is to be obeyed, the principles of our government regarded, and our civilization respected. Therefore, the accused should have his trial and some tribunal should be established before whom he should be tried and its judgment of guilty should be rendered before he should be recalled by popular vote. As our Constitution already provides for the tribunal, the trial, the judgment and the removal in accordance with the judgment, it would seem useless to establish another tribunal with power to find the facts only and no power to enforce its findings by appropriate judgment. If the recall of judges for misconduct now subjecting them to removal is to be accomplished without giving them a trial, then not only is our Constitution violated, but our entire theory of government is disregarded, our courts transferred from court room to hustings and a citizen's guilt or innocence determined upon unsworn testimony of any and all character by unsworn triers, not in cool deliberation, but in the turmoil and excitement of a political campaign. Does such a trial harmonize with free government? Can it meet the approval of a people whose culture and civilization and morality all associate the administration of justice with a fair and impartial trial in "due course of the law of the land?"

If the recall be not used for the purpose of removing judicial officers who are guilty of misconduct in office, but to recall them for other reasons, what are those reasons, and do they amount to causes for removal which will meet the approval of the sound and deliberate judgment of the people? Here I digress a moment to consider the nature of courts of justice and the duties of a judge. One must go almost back to barbarism to find a civilization that did not recognize the importance of independent tribunals to decide questions of the varying rights of citizens in their persons and their property, and the advance in civilization of any nation may be largely measured by the independence of its judiciary. It is likewise true that advancing civilization has insisted that judicial tribunals shall be entirely separate from legislative bodies and beyond the control of the executive power. In the preamble to the Constitution of the United States, it is declared, "We, the people of the United States, in order to form a more perfect union, establish justice \* \* \* do

ordain and establish this Constitution for the United States of America," and to carry out their purpose of establishing justice, the framers of the Constitution vested the judicial power of the United States not in Congress, not in the executive, but in a supreme and inferior courts. Under the Constitutions of each of the States of the Union there is the same division of powers. Courts are essentially tribunals to which are submitted conflicting question of rights recognized by the law of the land and the judges thereof have but one duty, and that is to conscientiously and intelligently decide the questions so presented under the law and the evidence.

A judge is selected by the people not to legislate for them or carry their laws into execution, but to decide causes as they come before him and to apply to judicial controversies the law of the land in due course. No one contemplates that a judge will be infallible in his judgments nor that the ends of justice will be obtained with absolute certainty and accuracy in his decisions. All that is expected of him is a conscientious discharge of the duties of his office to the best of his ability. His judgments, however, must be rendered on the facts before him under the law of the land, and not on the direction of any temporary popular will. Each party to the controversy before him has a right to his impartial, conscientious judgment under the law of the land, upon the facts proven. Any procedure, therefore, which takes from our courts the authority to decide controversies affecting the personal or property rights of the citizens judicially cognizable and vests in the executive or the law-making body deprives each citizen of a Constitutional right and operates to destroy the fundamental principle of our government that it shall be divided into three independent departments, legislative, judicial and executive.

Returning now to causes for judicial recall other than those involving official misconduct; here we are confronted with the difficulty of determining from the generality of the complaints how to classify such causes and I must be general in my classification. I think it will be accurate, however, to say that these complaints arrange themselves under two general heads, and that it is contended that a judge should be recalled (1) for rendering a wrong decision in a case whether the wrong be inten-

tional or not; (2) where his general course of conduct on the bench is objectionable. The second contention necessarily means that whenever a judge becomes objectionable to a certain proportion of voters he may be recalled. This, logically expressed, is a naked demand that all judges when elected should hold their office for no fixed term, but at the will of a certain proportion of the voters. This deprives the judicial department of the independence provided for in our constitutions—an independence which is the outgrowth of our civilization and finds the warrant for its existence in the experience of ages, and in the misfortunes that have fallen on governments wherever and whenever it has been denied either by crowned monarch or a restless and temporarily dissatisfied people.

It is manifest that if a judge may be recalled for an incorrect decision, the question of the determination of the correctness of the decision must either be submitted to some other tribunal or to the people at the polls. If it is submitted to some other tribunal, this is nothing more than a giving to one of the parties litigant a right to have the decision reviewed, and if upon such review, it is held to be erroneous, the judge who rendered the decision is to be subject to recall by popular vote.

As the decisions of all *nisi prius* courts, State and Federal, are subject to review by appellate courts either on appeal or by writ of error, the creation of a new tribunal to test the correctness of any decision by any of those courts would merely amount to giving to a litigant still another tribunal to which he could take his case for determination, unless the sole function of such new tribunal would be to determine the correctness of the decision complained of in order that its judgment might be made the basis for recall of the erring judge by a popular vote. If the jurisdiction of the new tribunal should be so limited, then if a case should arise where a litigant had pursued his remedies through all of the courts and lost his case in each one and then demanded that it should be again heard, not for the purpose of determining his right, but in order that the result of such hearing might be used to recall the several judges who had decided against him, and the tribunal last appealed to should hold the decision of all previous judges erroneous, we would have an instance where judges would be punished by removal from office

yet the litigant held bound by the very decision that called forth such punishment. If upon the other hand, the question of the correctness of the courts' decision is to be decided at the polls, then we have a solemn decree entered by a sworn judicial officer, upon evidence heard under oath, reviewed by an unsworn body, either upon a record as it stands or upon unsworn testimony, and the people, as a body, exercising judicial functions without regard to any of the safeguards that the wisdom of ages and the growth of government have shown to be necessary to secure the due and proper administration of justice.

As hereinbefore stated, a litigant in either the State or Federal courts may have the judgment of the trial court reviewed on appeal or by writ of error by some appellate court, and it not infrequently occurs that the decision of the trial court is reversed and judgment rendered by the appellate tribunal. In such a case each litigant would feel himself aggrieved, the one by the trial court and the other by the appellate court. Now suppose one of them secured a petition for the recall of the *nisi prius* judge, and the other secured one for the recall of the appellate judges and that at an election held the judges of both courts were recalled, would any good be accomplished? Would the incorrectness of either judgment be established? Or suppose at such an election the judges of the appellate court were recalled and the judge of the lower court was not, would not this be a finding by popular vote that the judgment of the trial court was correct? We would then have the anomalous condition that the litigants were bound by a decree of the appellate court which the popular vote had determined to be incorrect, and the judgment of the trial court which the popular vote had found to be correct was unenforceable. It may be answered that an intelligent citizenship would not be guilty of the folly illustrated above, but it must be remembered that the ballot does not always express the best thought and deliberate judgment of the people; that frequently a comparatively small number of voters attend the polls; that at a recall election there may be candidates other than the judge whose recall is asked; that the personality of the candidates plays an important part in influencing voters, and it is not improbable that the conditions I have supposed might in fact arise.

When the people elect a judge they do not commission him to

do their bidding; he is not their agent to decide cases as they may from time to time dictate. He is placed in office to decide under his oath and on his conscience and in accordance with the law of the land in due course the cases brought before him. His functions are judicial, not legislative, nor representative. If he takes his office subject to be recalled for any decision he may render, what becomes of his judicial functions? Is he not then a mere ministerial officer whose sole function is to decide cases as a majority of his constituency demand, and with no method provided him whereby he can ascertain in advance of his decision how his constituency wishes any particular case to be decided?

If a method is provided for him to ascertain before deciding a case how he shall decide it, then would not his judgment be that of a certain proportion of the voters, and not his own? Where then would the judicial department of the government really be? Certainly in an unsworn portion of the voters who would reach their conclusions through no settled forms of procedure, upon no established precedents, not upon the best available evidence and with no responsibility, except the moral one resting on each citizen as a voter. Can any one conceive of a confusion in the administration of the law worse confounded?

If a judge be subject to recall whenever any decision does not meet with the popular approval, where does this logically lead us? Clearly to a decision by populace, and not by courts, with no benefit to the litigant aggrieved by the decision unless it be provided that the recall of the judge reverses the judgment by him rendered; that of course means a recall of decisions by popular vote and a practical elimination from our form of government of a separate judicial department as defined by our Constitution, as intended by the very principles upon which it is founded and as contemplated by the civilization out of which that government has grown. In evident recognition of the logical meaning of a recall of judges for alleged erroneous decisions, the most recent doctrine of a recall of judicial decisions by popular vote has been announced. As this procedure if applicable to all decisions would logically result in trial by ballot and not by judicial tribunals, its advocates propose to limit it



to a single class of cases. I will state their contention in the language of its originator:

"I am proposing merely, that a certain class of cases involving the police power, when a State court has set aside as unconstitutional a law passed by the Legislature for the general welfare, the question of the validity of the law—which should depend, as Justice Holmes so well phrases it, upon the prevailing morality or preponderant opinion—be submitted for final determination to a vote of the people taken after due consideration."

Stripped to the core, this means that whenever a legislative act is void as violating rights protected by the Constitution of a State, unless it can be upheld as a proper exercise of the police power, then the question of its validity should be determined by a vote of the people and not by the decision of a court.

It will be noted, however, that this power of popular determination is not to be exercised until after the judgment of a court has been first called for and obtained. This is a clear recognition that the question is primarily a judicial one and presents the contention that in this class of cases the people should exercise judicial functions through the ballot box. The question to be submitted and voted on is as to the validity of the law, and as all State legislative acts are valid unless they violate the Constitution of the State or the Constitution or laws of the United States, where the latter have controlling force, this question is necessarily a judicial one. The people are to be called upon to decide by ballot whether a given law is constitutional or not—whether in fact it comes within and is authorized by the police power of the State or is inhibited by expressed or implied constitutional limitations.

It is apparent to anyone who gives our governments, State or National, and their principles, a thought that they are all founded upon written Constitutions, the limitations of which are intended to protect minorities against majorities, and the whole body of the people against hasty action by themselves. The sovereignty of the people is recognized, but it is equally recognized that it is the best thought of the people that should guide and direct government, and that this best thought can only be reached upon careful deliberation. This is merely carrying into a government by the people the restrictions which

the individual man puts upon himself in conducting the affairs of his life. In government, however, these restraints are in the interest of all the people, and may not be lightly thrown off by a mere majority. To make these restraints effectual our written Constitutions provide how they may be amended, and the provisions for amendment are so framed as to obtain as nearly as possible an expression of the best thought and deliberate judgment of the people. The power which the people confer on their legislators is to legislate within the limitations of their written Constitutions. If any legislative act violates an inhibition of the Constitution the Legislature enacting it exceeds the power conferred and the legislation is void. If this be not true, then wherein lie the restraints and protecting power of a written Constitution? If it be true, then how can any court be asked to uphold or enforce any law which violates a constitutional inhibition? Again, if the law is unconstitutional, can it be made constitutional by a declaration of the people at the polls that it is?

Does not our government as constituted by its founders and continued by their descendants essentially contemplate that the question of the constitutionality of a legislative enactment is one to be decided by the courts and not determined at the polls?

The opinion of Judge Holmes quoted from as justifying a recall of judicial decisions in certain cases is not subject to the interpretation placed upon it by the distinguished citizen who suggested such recall. Judge Holmes was deciding the question of whether a legislative act under consideration violated a provision of the Constitution of the United States or should be upheld as the exercise by a State Legislature of the police power of the State, and in his opinion he says:

"We have few scientifically certain criteria of legislation, and as it often is difficult to mark the lines where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the law-making power \* \* \* It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or

strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

It would be difficult to express in more forceful language that constitutional inhibitions should always be construed in connection with the reserve police powers of the State, and that if a legislative enactment extends to one of the great public needs and is shown by usage, the prevailing morality or strong and preponderant opinion to be clearly and immediately necessary to the public welfare, it should be upheld as an exercise of the police power, although it may injuriously affect private property or restrain personal liberty. There is certainly nothing in Judge Holmes' language to justify any contention that he intended to broaden the police power as previously judicially understood. In fact in his opinion on the petition for leave to file an application for a rehearing he says:

"The analysis of the police power whether correct or not was intended to indicate an interpretation of what has taken place in the past, not to give a new or wider scope to the power."

As written Constitutions throw their protection around the persons and the property of all citizens alike, subject to the exercise of the tremendous police power of the State, the determination whether in a given case an act of the Legislature should be held void as an unconstitutional invasion of the personal liberty or property rights of the citizen or valid as an exercise of the police power is one involving a construction of the Constitution of both the State and United States, the true meaning of the act questioned and the determination of whether it is a police measure or not. To determine the latter question, the court must ascertain not what are the wishes of a given percentage of the voters, but the fact that by usage the prevailing morality or strong and preponderant opinion it is shown that the particular act is clearly and immediately necessary to the public welfare. A recall of a court's decision that an act is not within the police power of the State, therefore logically means that this question is to be determined by a given majority or plurality of voters, each voter acting upon his own information and belief and without any requirement that as a condition precedent to his casting his vote he should make any investigation or hear any evidence upon the issue which his vote may determine. As the

popular vote will finally determine in cases of such recall, whether the legislative act is within the police power of the State or not, it must necessarily and logically follow that the personal and property rights protected by the Constitution may, notwithstanding such protection, be injured or destroyed by popular vote in a particular case. This necessarily means that a citizen may be deprived of a constitutional right by a popular vote, although the constitutional provision protecting the right remained unrepealed and unamended, and notwithstanding that its protective force had been upheld after a full hearing by a court of last resort.

The full reach of this power to recall decisions must be considered in determining its effect on our constitutional governments. It is to be applied in "a certain class of cases involving the police power when a State court has set aside as unconstitutional a law passed by the Legislature for the general welfare."

When we pause to think of the great number of cases involving questions of the police power, of the difficulty of drawing any definite line of limitation around it, the strong probability that in times of political excitement legislation will be enacted beyond it in the expectation that the legislation will be upheld by an excited populace, we must realize that if courts perform their duties in accordance with the due course of the law of the land in such cases a vote for the recall of decisions will be frequently demanded.

The limitation of the recall to the class of cases mentioned will in practical operation have more of shadow than of substance. Although the proposition is to apply the recall only to those decisions holding void a legislative act, logically the procedure would ultimately be extended to cases where a city ordinance was held void as not coming within the police power of the municipality. And why limit the recall to cases where the law has been held unconstitutional? Why not let it apply equally to those cases where the law has been upheld? In the latter class of cases the courts have judicially declared, after hearing had that the citizen may under the particular legislative act be deprived of property or liberty notwithstanding the guarantees of the Constitution, and should he not be permitted to appeal to his fellow citizens for protection at the polls against legislative

and judicial encroachment on his constitutional guarantees? If his fellow citizens are to be permitted by ballot to take his property or liberty over the decision of a court of last resort that they could not do so, ought he not to have the right to be protected by the same ballot in his property or liberty as guaranteed him by the supreme law of the land?

So vital a change in government as the recall of decisions in a particular class of cases by popular vote would result in demands that its application should from time to time be extended to other classes, for constitutional changes in government do not go backward until finally there would be no "law of the land" for judicial administration, and each citizen would hold his property and his liberty subject to the right of a prescribed number of his fellow citizens to take them from him at the polls at any time. This would be popular government reduced to its

It will, of course, be contended that the ultimate right to legis-  
primitive and barbaric form.

late is in the people, and that therefore when acting through their legislators they pass a law that logically they should be permitted to determine whether the law is constitutional or not; but this reasoning is specious and fallacious and disregards the fact that our governments, State and Federal, rest upon written Constitutions. The people under these Constitutions have restrained their power to legislate (except by constitutional changes) and all legislation through their legislators must be within the power so restrained. Each of our written Constitutions provides how it may be amended, and amendments not in accordance with the methods provided are, of course revolutionary in their character. If the power to determine whether legislation is constitutional or not is placed with any given number of the people, then the power that legislates holds the power to determine the constitutionality of its own legislation and constitutional restrictions are reduced to mere forms. It is, of course, true that the people may by amendments to their Constitutions repeal all limitations on their power to legislate through their representatives in Legislatures assembled, but this would amount to practically changing our government, State and Federal, into pure democracies with none of the protections to the individual citizen that is given him by the restraints contained in written

Constitutions. One of the protective processes provided for in our Constitutions is lodged in the judiciary and is expressed in the power given it to judicially determine, in due course, under the law of the land, whether and when constitutional guarantees are invaded by any of the other departments of government. We, therefore, arrive at last at the ultimate question whether this power of judicial determination has been so exercised by the judiciary as to demand a constitutional recall of the power and the practical repeal of all constitutional restraints upon legislation.

As stated in the opening of this paper, it may be admitted that some judges have been corrupt, that some judges have been ignorant, that some judges have knowingly rendered erroneous decisions and that some judges have wrongfully held legislative enactments void, but can it not be equally said that in all countries and in all ages and in all departments of government there have been some ignorant, incompetent and even vicious officers, yet does that justify the withdrawal of a fundamental power shown by experience to be necessary either to the due administration of the laws of the land or to the political welfare of the people? Or does it demand a practical abandonment of constitutional government and the taking of the initial step towards trial by ballot and not by law? Has our government as now constituted been such a failure in the past and present that its organic form should be materially changed? Of all the numerous constitutional questions that have been submitted to courts how many have been erroneously decided? Of all the judges who have sat upon the State and Federal Bench, how many have been suspicioned of corruption? Is it not true that with few exceptions the sober second thought of the people has sustained the various courts in their decisions upon constitutional questions?

These are questions we should all ponder before giving assent to radical changes in our Government and the taking of a long step towards the conversion of democratic governments, under the restraints of written Constitutions, to pure democracies where the temporary popular will constitutes the only law of the land and its due course of administration is confided to the ballot. Particularly we of the South, recalling legislation that

reflected the anger of one section against another, should remember that our manhood and our liberties in troublous times were protected by the calm and sober judgments of a great court.

We are constantly reminded by the advocates of recall of judicial decisions that this procedure is, practically, in effect as to the class of cases involved in the construction of the police power of a State, in those Nations whose Constitutions are unwritten, as the power of their legislative bodies is unlimited by any supreme constitutional code, but the statement is inaccurate and uncandid. It may be correct to say that in those governments the power to legislate a procedure for recall is in their Legislatures, as we may say that the power to do so in this country is in the people by amendments to present or the adoption of new Constitutions. But we must not overlook the great moral restraining force of unwritten Constitutions and that if we abolish restraining clauses in our organic law intended for the protection of minorities, to secure the stability of our institutions and to preserve individual rights, we will have reached absolute government by popular will, in these matters, unrestrained by any constitutional inhibitions. The rights of the individual, existing Constitutions, legislative powers and constitutional restraints in the government of any country can not be safely considered by merely viewing them as they now may be, but we should study the history of their growth, the reasons for their existence, the geographical situation of the country, the social and racial characteristics of the people, the general political sentiment as fixed and mellowed by time, in fact, every element that has entered into its civilization, and even then we may not catch in its fullness the true spirit of the government. When we are asked, therefore, to abandon any of our institutions, to abandon any of our constitutional provisions, because they do not exist in other governments, we must bear in mind that our civilization rests upon written Constitutions, the very soul and essence of which are that in a government by the people they shall be protected against any hasty or inconsiderate action by themselves by proper constitutional restraints. We have had no such long life, we have passed through no such lasting experiences, we have no such traditions, we have no such permanent customs as are required to build up a great wall of

conservative sentiment to stand as a practical restraining force in the place of a written Constitution. We annually take into our citizenship upon a few years of residence people from practically every other country of the world, unfamiliar with our government and its institutions, many of them educated in the sentiments of another civilization, and, if the restraints of our Constitutions are abandoned, their ideas and their wills will enter into the popular will expressed at the polls, and can it be doubted that in the absence of control by written Constitutions they will either measure their responsibility as voters by the moral restraints prevailing in the civilization in which they were reared or they will act upon their unrestrained individual desires? Is it not true that the successful absorption into our political life of these people is largely due to the restraints of our Constitutions and the checks and balances of power against power provided therein; and is it not also true that in any election held for the recall of a particular decision the consideration of the voters would be narrowed to such issue and their judgments influenced by their immediate desire to have a single piece of legislation upheld, whereas if the broader question of repeal of constitutional restraints was up to them for determination, discussion would take a wider scope and the question would be considered with greater deliberation and more dispassionate thought?

The demand for the recall of judges or judicial decisions is one of recent origin and we must look beneath its surface to find what in truth has prompted it. I think that most thinkers will agree that the reasons given for it are superficial, and behind them lies a deeper cause to which expression has not been freely given. The concentration of wealth, the growth of great corporations, the mad and selfish race for money, have blinded men to the real purposes of government, and they have looked and are looking to it not for the protection of property acquired solely by individual effort, but also for that obtained through the direct or indirect aid of legislation, and they are still desirous that government shall assist them in the acquisition of still greater wealth. Great fortunes have been built up through government assistance and the danger that the power of aggregated



wealth may ultimately destroy the individuality of the citizen has slowly but surely become evident and caused great alarm.

We have arrived at a point in our political life when a large body of the people view accumulated capital as a government favorite and there is a growing demand that government give to that intangible property, the individual's right to earn money by his labor, not only the same protection as it gives to the ownership of visible, tangible property, but that it also give legislative assistance to the earning capacity of the individual.

The world-old clash between the favored few and the unfavored many has become acute, and while the former are constantly appealing to the courts for protection under constitutional guarantees, the latter are demanding legislation, under the police power of the State, to restrain accumulated wealth from harmful use. When, therefore, the courts have held any legislation unconstitutional their decisions have met the criticisms of the people at whose behest the legislation was enacted and their adjudications instead of being respected as the conscientious expression of judicial officers upon constitutional questions have been denounced as either corrupt or ignorant conclusions. That a demand should then follow either for the destruction of the judicial system or for the right of a proportion of the people to remove judges or to recall decisions by the ballot, is not an illogical result of excited discussion by an angered populace.

For this condition the Bench and Bar are not wholly irresponsible. Courts by their very constitution are conservative, and rightly so, but it is unquestionably true that they have in some instances unduly narrowed their viewpoint on great constitutional questions and been ultra conservative where conservatism only was demanded. It is equally true that some great lawyers have at times measurably sunk their obligations as citizens in their zeal for the financial interests of clients and pointed the way for corporate wealth to acquire undue advantage under the seeming protection of constitutional guarantees. These are mere incidents in the complicated administration of organized society under any form of government where the security and happiness of its members are not dependent solely upon the changing will of temporary majorities, but are preserved and protected by the law of the land administered in due course,

and they do not call for the destruction of constitutional guarantees or the radical change from a government by law to one by ballot.

I confidently believe that incidental evils in the administration of our government in its present constitutional form will all be cured by the sure, safe, though perhaps slow education of the public conscience, and that the "Book" will sooner or later give proper answer to every appeal to passion, to every exhortation to class prejudice, and I am convinced that in this great educational advance, the Bench and the Bar will keep step with the needs of the times and take high rank among those who stand for liberty under law, who believe that partisanism is not patriotism, that destruction is not conservation, that reasonable restraints on the popular will for the general good is not tyranny, and that the order of constitutional government is better than the chaos of unrestricted judicial decisions at the polls.

I have an abiding faith that a government which is controlled by the deliberate judgment of the people will not "perish from the earth," but I have only a hope and a prayer if, for such judgment, there is substituted the hasty thoughts and unrestrained action of temporary majorities. A stable government means equilibrium, and when the propulsive force of passion finds no check to its advance it gathers strength as it progresses and equilibrium is not attained short of destruction and rebuilding.

**"THE INCORPORATION OF TRADING COMPANIES EN-  
GAGED IN INTERSTATE COMMERCE BY A FED-  
ERAL CHARTER AND THE CONSEQUENCES  
WHICH WOULD FLOW THEREFROM."**

PAPER BY

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If trading corporations may be chartered by Congress to engage in interstate commerce, it must be by virtue of the power in Congress to regulate interstate commerce. No express power is granted Congress by the Constitution to charter corporations. The corporation charters granted by Congress are granted as a means of carrying out some other power which is expressly granted. The Articles of Confederation which preceded the Constitution of the United States did not give to the United States the power to regulate trade and commerce, or to compel uniformity in the regulations of the States; and this lack of power and the consequent obstructions to freedom of commerce between the States was a principal cause of the organization of the present government. The power to regulate commerce among the States and with foreign nations, is one of the most important, comprehensive and far reaching of these possessed by the Federal Government. Certainly no other power can be the occasion of the same amount of direct immediate government of the people in their ordinary concerns and business. But this power, considering its scope, has been but sparingly exercised. There is a great field of Federal control and of intimate government which Congress has up to date not seen fit to occupy, leaving the interstate commerce in many respects without adequate or proper regulation. Conditions which now confront the country will undoubtedly bring the powers of Congress over this matter into a very full activity and operation.

Will the incorporation of trading companies by Congress to engage in interstate commerce be one of the means adopted to bring about the desired regulation of interstate commerce? This seems most probable, because by no other means could the

regulation of interstate commerce be so easily, so directly and so thoroughly accomplished. This naturally raises the question what are these matters and concerns of interstate commerce which are so insistently demanding regulation. The answer is that the necessity for this regulation arises out of the fact that so very large a portion of the interstate business of the country is now done by corporations chartered by the several States and which are frequently by the State which chartered them prohibited from doing within the State of their origin the business which they are organized to do in other States. To a person unfamiliar with this country and its history, it would seem strange that corporations to do business throughout all the States should not be chartered by the Government which represents all the States, and which can with perfect ease regulate the operations of the corporation wherever conducted and which has the most vital interest in the operations of the corporations at all places. It would seem the same reasons which make it proper an interstate corporation should be of national origin would justify the prohibition of a State corporation from operating beyond the borders of a State creating it, or if permitted, allowed to operate only under such Federal license as would in effect amount to a new charter granted by the Federal Government bringing the corporation as to interstate operations completely under the regulation of the general government. The intelligent stranger would perhaps find it equally strange that a State should charter corporations to do business in other States, when it had but slight interest in the manner in which the business was conducted in the other States, and was without inclination, power or ability to regulate the mode of its business in other States, and when the other States themselves could exclude the foreign corporation from their limits, but if they admitted it could regulate it in a very imperfect and inadequate way. In the early days of our history as a nation these difficulties which now so insistently demand recognition and elimination were unknown. Business was then done mainly by partnerships or individuals. Now business and especially the larger business, what is known in the language of the day as "Big Buiness" is so largely done by corporations, that the evils of corporate organization and management become a very vital question. Much

of the discussion on this subject is entirely misleading and untrue, and the result of political hysteria or the craving for sensational effects which has converted our magazines, which used to be the means of instruction and amusement to the people, into the vehicle of half baked political theories proceeding from the pen of some half educated person ignorant of history and of the institutions of the country. Making due allowances for this exaggeration and misstatement, and not permitting ourselves to be diverted from the truth by the manner in which it is exaggerated and misstated, let us consider what are the more fundamental and important of these evils in corporate organization and management.

But before doing so let us first state what has been proposed as a proper measure for the regulation of trading corporations engaged in interstate commerce. It is that such corporations should be chartered by the Federal Government under a uniform law framed to protect the public and also the investors in the stock and securities of such corporations; second, that they and all their affairs be subjected to regulation by an act of Congress, framed according to the plan of the Act which is operating so well in the regulation of interstate transportation by railways; third, that an administrative body—a Commerce Commission—be created with powers of regulation and supervision and of *visitation* over the interstate trading corporations, somewhat similar to the powers possessed by the Interstate Commerce Commission over the common carriers, and with the particular powers hereinafter indicated.

It would seem from experience close at hand a commission of this character could be made very useful. The writer is not advised as to what person or persons are entitled to the credit for framing the terms of the present act to regulate commerce, as amended, which controls interstate transportation by railroads. It is probable the Act is the result of the practical experience of years acquired by the Interstate Commerce Commission. The Act is an admirable law. Out of a chaos of unregulated acts has arisen through this law order, reasonableness and justice; and while thoroughly regulated and controlled the administration by the owners of the properties engaged in transportation has not been invaded or superseded. The Interstate Commerce Com-

mission has administered and is administering this law with a proper regard in all instances for the public rights and welfare, and at the same time of the rights of the corporations, and of capital invested in the railways. The national railway regulation is distinctly a success and highly beneficial. It is claimed no reason can be shown why a similar commission under a somewhat similar law could not bring about equally satisfactory regulation of trading corporations engaged in interstate and foreign commerce.

To return to the evils requiring correction in corporation business:

First. Is the lack of uniformity in the law of corporation organization and liability. The laws of the various States on these subjects are very dissimilar, and the laws of many States very fragmentary and incomplete. Uniformity in the law, especially as there is no reason why the law on this subject should be different in one part of the country from what it is in another, would be a very great improvement, and of especial benefit to the investing class; those who desire to become the owners of the stock or bonds of such corporations. The measures proposed would bring about a perfect uniformity in the law of corporate organization among interstate corporations, and as will be shown hereafter, uniformity in the law on most subjects affecting in a vital or important manner such interstate commerce.

Second. A second evil is the secrecy of corporate operations and business whereby transactions can be carried through to the prejudice of the public, or to the prejudice of the stockholders interested in the corporation; or money can be expended illegitimately in the influencing of public elections; or the laws prohibiting monopoly and other laws, criminal and civil, may be violated with slight chance of detection and punishment.

It is not meant that the books and business of private corporations should be made public, but the books and papers of a corporation should be subject without notice to be examined at any time by a public official with similar authority and rights to those of a bank examiner of National banks. It would probably be that occasion for examination of the books of many corporations would seldom arise, but the fact alone that they *might be* examined without notice at any time, and that dishonesty or viola-

tion of law in the management of the corporation's affairs could be punished by confinement of the guilty persons in the penitentiary, would at once remove many of the abuses of corporate administration. It is stated in Blackstone's Commentaries that the Crown possessed a power of visitation over all corporations, a general power of supervision, inspection and examination over them to insure they were not abusing their franchises, but were properly performing the functions for which organized. This power of visitation still inheres in the Government, and the plan suggested would vest it immediately in the Commerce Commission, who would directly exercise the function by their examiners. This would be all the publicity needed to prevent most abuses.

Third. A third evil in corporation business is the issuance of stocks and securities not representing value in any reasonable sense; the issuance of such securities without the supervision and approval of any governmental agency. By this means the investing public is repeatedly swindled, and corporation transactions which because they *are* corporation transactions ought to be reliable, are for that very reason unreliable. It ought not to be possible for a swindling corporation to exist.

It is proposed that stock and bonds of corporations engaged in interstate commerce, whether trade or transportation, or other commerce, shall be issued under administrative supervision and approval of the proposed Commerce Commission or other similar body, but with a right, of course, of appeal to the courts to secure validation of the securities or stock when wrongfully withheld by the Commission.

Fourth. A fourth evil in corporation business consists in one corporation holding shares in another corporation. This should be prohibited and rendered impossible. This is a prolific source of monopoly of illegal interferences with both prices and production, and of oppression of competing industries, and almost invariably results in cheating minority stockholders. A corporation when the controlling interest in its shares is owned by another corporation, will be operated in the interest of that other company and not of its own shareholders.

This abuse of corporate management should be *prevented* rather than punished. When the thing is done it is difficult to

correct, even when discovered, and when at the end of litigation a conviction is secured. A body having inquisitorial and visitatorial powers over interstate corporations could prevent the evil in the first instance, or if discovered, take proper measures to require the sale of the illegally held stock to independent third persons, or other rectification of the evil.

Fifth. A fifth evil of corporate management is the acquisition by one corporation of a competing business or property, or merging or consolidating with competitors; by which means monopolies are frequently created.

It is proposed that these transactions be allowed only when approved by the proposed Commerce Commission.

Sixth. A sixth evil of corporate operations is the sale of goods, merchandise, commodities or services in localities at less than reasonable cost not for any economic or business reason, but solely for the purpose of breaking down competition.

There ought to be a ready and efficient means of both prohibiting and punishing this wrong.

Seventh. A seventh evil in corporate operations is the making of agreements by direct means or indirect means affecting prices or production by which monopolies are created. Such agreements should be entirely prohibited or else if permitted at all should be made under the approval and control of some governmental administrative body such as the proposed Commerce Commission, which could control, cancel or modify the agreement and prevent its abuse.

It has been proposed in this connection that railroads be permitted to agree on interstate rates subject to the approval of the Interstate Commerce Commission. Such a law would seem entirely proper as the rates being subject in any event to legal supervision and control, an agreement as to them when approved by the Commission would cause the rates to be rates fixed by the Commission rather than by the parties.

It has also been proposed that agreements to limit production and fix prices, being agreements whose purpose and effect is to prevent ruinous competition and not to create or perpetuate monopoly, may be made subject to approval of the proposed Commerce Commission and subject to be set aside or modified by the Commission at any time on complaint and proof that the agree-



ment was harmful or inexpedient, or was being misused for purposes of oppression. It is suggested as a part of the proposed plan (a) that such agreements be for a limited term, and subject to modification or rescission upon the order of the Commerce Commission on proof of oppressive methods or changed conditions; (b) that any competitor desiring to become a party to the agreement may do so, and that it shall be enforceable in the courts by and against the parties to it; (c) that the agreement be approved by the proposed Commerce Commission only when it is satisfied that the industry has become generally unprofitable and that the maximum prices fixed in the agreement will not permit more than a reasonable profit; (d) that any unfair or oppressive methods of attempting to force competitors to become parties to the agreement be prohibited and visited with severe penalties.

This proposal is a decided limitation on the unrestricted competition required by the Sherman Anti-Trust Law. The writer is not sufficiently advised on economic matters to say whether he thinks this modification of the law be advisable or not. A very cogent and instructive argument was made in favor of this proposition by Mr. Samuel Untermyer at the dinner of the Economic Club in New York City on November 22, last year. The proposed change is worthy of very serious consideration, and while *experiments in* legislation are to be avoided, inasmuch as this proposed law merely aims to create an exception to the operation of the Sherman Anti-Trust Law a statute which itself changed the law existing at the time of its enactment, it might be advisable to give the law a trial. Such a statute would be no more than a "*legislative declaration*" that agreements of the character indicated were not "in unreasonable restraint of trade" and it would seem the necessity of preventing the depletion of our natural sources of wealth, or of preventing ruinous competition would justify such agreements in many instances.

It is in the efforts made to prevent monopoly in interstate trade that the inefficiency of the present means of regulation becomes most apparent, and the necessity for a different system plainly evident. At present the States are wholly without power or ability to regulate this interstate commerce; the prosecution of offenses against the Sherman Anti-Trust Act does not furnish ade-

quate regulation. What is needed is that these abuses in interstate commerce may be prevented and checked promptly by some administrative body like the proposed Commerce Commission without resort to the courts. Let the resort to the courts be by an appeal from the action of the administrative board to correct its errors.

The inadequacy of prosecutions under the Sherman law as affording the desired regulation is easily apparent. To use a homely illustration, the Sherman Law is like the Frenchmen's flea powder made of brick dust. You must first *catch* your flea before you can choke him to death with the powder, and in this case when the offender is caught we find we do not want to destroy him. We wish merely to correct his bad habits. The Federal Government on the successful termination of the Standard Oil and Tobacco prosecutions was embarrassed by its victory. The magnitude of the property interests involved, the fact that this property was in large measure owned either through ownership of stocks or securities by persons who were no wise responsible for or guilty of the illegal acts condemned, placed the courts in a situation where the destruction or serious impairment of these great property interests would have been without justification. The end to be desired is prevention of these abuses through an adequate control, not destruction of property or values. Large and very large accumulations of capital in the hands of individuals are absolutely essential to the maintenance and conduct of any great and complex industrial civilization. The capital must be there to furnish the wage fund, to pay the expenses when profits are not being made, to tide over the periods of industrial and financial depression and no profit, to replace waste, to make the needed betterments, to discard obsolete appliances and methods, to keep the business equipped with new machinery and devices, and in line with new methods and the development of science and invention. The law should encourage rather than discourage these great accumulations of capital in the hands of individuals. They should be required through taxation to contribute their proper proportion to the expenses of government; and they should not be permitted to abuse their powers by illegally destroying competition, by undue interfer-

ence with production or prices, or by oppression or abuse in any other form.

The result of these prosecutions demonstrates that the present method is inadequate for any real regulation of interstate commerce, and that the method of administrative supervision by Federal authority of either Federal corporations or their equivalent, will have to be resorted to.

It has been suggested that to the proposed Commerce Commission be intrusted the disintegration of all corporations existing in violation of the Sherman Anti-Trust law, subject to review and control by the courts rendering judgment of dissolution.

Returning to the thread of the discussion, it must be clear that incorporation of trading corporations engaged in interstate commerce by Act of Congress is, in the language of Chief Justice Marshall in *McCulloch vs. Maryland*, 4 Wheat., p. 603, an "*appropriate means*" toward the regulation of interstate commerce and "*conducive*" to such regulation. If so, Congress can incorporate the companies. That this regulation might be accomplished in some other way does not affect the question, for Congress has the choice of means.

As between restricting corporations doing interstate business to such only as are operating under a Federal charter, or prohibiting corporations from engaging in interstate business, except on condition of taking out a Federal license, it may be said that the difference is formal rather than real, and that the license plan is merely a cumbersome and bungling way of accomplishing the same results as are accomplished readily and with simplicity and directness by the Federal Incorporation plan. The Federal Government may impose as a condition of granting a Federal license that the corporation shall first obtain from the State a charter of prescribed terms, by which it can not operate in interstate commerce except on condition of surrendering any powers or rights deemed illegitimate or injurious to the public interests, or exactly the same results may be achieved by making the acceptance of the Federal license operate in itself as a reconstitution of the charter of the corporation, in so far as it is engaged in interstate commerce—in effect the obtaining of the Federal license would to all intents and purposes, though

not in form, be the obtaining of a Federal charter or franchise which would absolutely control all the rights and obligations of the corporation when it was doing any act which tended directly to any degree whatsoever to the furtherance of or interference with interstate commerce. Such a corporation would in effect be operating under two corporate charters. In so far as it was acting in purely intrastate commerce, it would be acting under the State charter and subject to and controlled by the State law; but when doing any act which tended in any degree to directly affect interstate commerce, the corporation would be operating under its Federal charter, license or franchise, and would be subject to and controlled by the Federal law contained in acts of Congress. In such cases were interstate commerce in any way or to any extent or degree directly affected, promoted, prevented or interfered with, the Federal law would entirely supersede the State law and be controlling.

The objections to this plan lie in the complications arising from the application of two systems of law to the corporations, and to the lack of that simplicity of organization and clear understanding in advance of legal rights and liabilities, which is especially to be desired in all matters, and particularly in those affecting corporations. If Congress should adopt the method of Federal license it would most probably adopt it along with a system of Federal incorporation. The Federal license it seems would be but a useless and temporary sacrifice made to the ghost of States Rights, as ultimately the incorporation of interstate corporations will naturally devolve on the Federal Government, whatever be the method pursued in the immediate future.

Has Congress authority to charter such corporations? Returning to the thread of our discussion, we have stated that the substitution of corporate enterprise in lieu of individual in interstate trade and commerce has brought in its train certain very pronounced evils demanding regulation and control of such corporations and commerce. It is self evident from the discussion which has preceded that to the rapid, direct, thorough, and complete control and regulation of such commerce, Federal incorporation of the business engaged therein is the most efficient instrument. Were this not the case, were it only one among many means which were appropriate and conducive to the de-

sired regulation, it would be within the power of Congress to adopt this particular method of securing regulation, as it is within the discretion of Congress to adopt any means it saw fit, provided only the means adopted tended directly to the regulation of the interstate commerce. The Supreme Court has held that Congress has authority to charter a corporation to construct a bridge spanning a stream dividing two States, because of the right of Congress to regulate commerce between the States. (*Luxton vs. North River Bridge Co.*, 153 U. S., 525-529; 38 L. Ed., p. 808.) It has sustained the chartering of a railroad running through several States under its authority to regulate interstate commerce. (*California vs. Central Pac. R. R.*, 127 U. S., 1-39; 32 L. Ed., p. 157.) In the great leading case of *McCulloch vs. Maryland*, 4 Wheat, 216; 4 L. Ed., p. 579, where the right of Congress to charter the old United States Bank was brought in question, this right was sustained on the ground that while no express power was given to Congress to charter corporations, the incorporation of the bank by Congress was an appropriate means of conducting the fiscal operations of the Government and conducive to that end, and that it was in the discretion of Congress to adopt any means which tended directly to the execution of the constitutional powers of the Government. Applying the principle of these cases, if the power to regulate interstate commerce will authorize Congress to charter a corporation for the purpose of building a bridge, a mere minor and collateral instrumentality of interstate commerce, it will certainly authorize Congress to charter a corporation whose purpose is to conduct the interstate commerce itself, especially when this is the most direct and efficient means to a thorough and comprehensive regulation of that commerce. The same conclusion may be drawn from the decision sustaining on the same ground the authority to incorporate interstate railroads. A change here and there in the language of *McCulloch vs. Maryland* to fit the difference in the subject matter under discussion shows both the decision and the argument in that case are of perfect application here. We quote, underscoring the substituted words:

"If a corporation may be employed indiscriminately with other means to carry into execution the powers of the Government, no particular reason can be assigned for excluding the use

of the *Federal Trading Corporation* if required as a means of regulating commerce between the States. To use the *Federal corporation* must be within the discretion of Congress if it be an appropriate mode of executing the power of the Government to regulate *Interstate Commerce*." (4 Wheat, 422.)

Again:

"The existence of State Corporations can have no possible influence on the question. No trace is to be found in the Constitution of an intention to create a dependence of the government of the Union on those of the States for the execution of the great powers assigned to it. Its means are adequate to its ends, and on these means alone was it expected to rely for the accomplishment of its ends. The choice of means implies a right to use National corporations in preference to State corporations, and Congress alone can make the election." (4 Wheat., p. 424.)

Whatever, therefore, might have been the ruling at an earlier day when the States Right sentiment controlled men's minds, we believe it can be reasonably assumed that at this time the Supreme Court would sustain the chartering of interstate trading corporations by Congress as a legitimate exercise of the power to regulate commerce. Sound interpretation of the Constitution would seem to sustain the conclusion. It is worthy of note that President Taft addressed a message to Congress recommending Federal incorporation of interstate trading companies. It is evident from that message and from the fact that he requested the passage of the law he considered it constitutional. His noteworthy sincerity and straightforwardness in his public utterances, and his great ability as a lawyer entitle his opinion to the highest respect.

It is a matter of interest to consider the character of corporations which Congress has from time to time chartered. We do not here mention the corporations intended to operate over the territories as Congress has plenary legislative power in that field. There are the National banks with which we are well familiar. Congress has also incorporated a considerable number of eleemosynary and educational corporations, fraternal orders, etc., corporations not organized for profit. We mention a few as illustrative: American Academy in Rome, American National Red Cross, Archeaological Institute of America, Carnegie Foun-

dition for the Advancement of Teaching, Great Council of United States Improved Order of Red Men, Supreme Lodge Knights of Pythias, Supreme Council of the Thirty-Third Degree of Scottish Masonry for the Southern Jurisdiction of the United States, National Society of the Daughters of the American Revolution, Society of the Army of Santiago de Cuba, General Federation of Women's Clubs, and many others. The list is interesting and sometimes amusing. I will not undertake to locate the constitutional authority for these various charters. The list of commercial or business corporations chartered by Congress after excluding the National banks, the National trades unions, and the various interstate bridge companies is not very large. Among banking institutions are the National banks, the Bank of the United States, the Bank of North America chartered by the Congress of the Confederation. Among the shipping companies are the following: Washington, Alexandria & Georgetown Steam Packet Co. (Act March 3rd, 1829), Washington Mail Steamboat Co. (Act March 25, 1870), Washington and Boston Steamboat Co. (Act May 4, 1870), National Bolivian Navigation Company, Maritime Canal Company of Nicaragua. Among interstate railroads chartered by Congress are the following: Union Pacific Railway (1862), Northern Pacific Railroad (1864), Atlantic and Pacific Railroad (1866), Texas and Pacific Railroad (1872); various National trade unions have been incorporated from time to time; various bridge companies to build bridges spanning streams dividing two States, and possessing the right of eminent domain (available in the Federal courts) in both States, as the North River Bridge Co. (July 11, 1890), have been chartered by Congress from time to time.

Congress has no power to establish corporations as an end in and of itself; it can only establish them when they constitute a means or instrumentality of carrying into effect the powers granted to Congress by the Constitution. Its authority to establish corporations is illustrated and sustained by the following cases:

McCulloch vs. Maryland, 4 Wheat, 316; 4 L. Ed., 579.

Luxton vs. North River Bridge Co., 153 U. S., 525-529; 38 L. Ed., 808.

Osborn vs. United States Bank, 9 Wheat, 738, 861-873; 6 L. Ed., 204.

- Pacific R. R. Removal cases, 115 U. S., 1-18; 29 L. Ed., 319.  
California vs. Central Pacific R. R., 127 U. S., 1-39; 32 L. Ed., 150.  
Georgetown vs. Alexandria Canal Co., 12 Pet., 91; 9 L. Ed., 1012.  
Sinking Fund cases, 99 U. S., 700-727; 25 L. Ed., 496.  
United States vs. Sanford, 161 U. S., 412-432; 40 L. Ed., 751.  
United States vs. Central Pacific R. R. Co., 94 U. S., 449; 25 L. Ed., 287.  
Union Pacific R. R. Co. vs. United States, 99 U. S., 402; 25 L. Ed., 274.  
Ames vs. Kansas, 111 U. S., 449; 28 L. Ed., 482.  
United States vs. Union Pacific R. R. Co., 91 U. S., 72, 32; L. Ed., 224.  
Central Pacific R. R. vs. California, 162 U. S., 91-165; 40 L. Ed., 903.  
Oregon Short Line R. R. Co. vs. California, 162 U. S., 490-494; 40 L. Ed., 1048.

What would be the results of Federal corporation of interstate trading companies, and of the incident legislation by Congress for the purpose of effectually regulating commerce among the States?

The immediate effect would be that the trusts would disappear and the abuses of monopoly and dishonesty in corporate business would largely be eliminated. The confused and variant systems of corporation law existing in the various States would be replaced throughout the Union (in interstate matters at least) by a uniform modern and efficient code of corporation law; and to this the different States would insensibly assimilate and modify their own corporation laws which were applicable to their own purely internal affairs. The probable ultimate results would be to largely substitute a system of uniform national jurisprudence covering the whole field of interstate commerce in all its immediate and direct relations to persons and property in place of the differing laws of the States applicable to the same subject matters. To what extent this field shall be occupied by national law largely depends on the self restraint of Congress. It is not what Congress is authorized to do so much as what it



chooses to do. Today railway corporations engaged in interstate transportation are governed as to interstate rates by Federal law; their rights and liabilities to passengers and the shipping public are in the main controlled by Federal law; their liabilities to their employees when engaged in interstate commerce are governed by Federal Statutes; and there is now in process of enactment a bill to substitute in place of the common law and Statute liability as now established by Federal Statute, a system of insurance of the employee against injury in the service, the expense of such insurance falling on the master; the appliances and equipment to be used on the cars to insure safety are prescribed and enforced by a Federal statute, and the carriers are held liable, though the car be not at the time used in interstate commerce; it is sufficient if the railroad which is using the car is itself engaged in interstate commerce. (*Southern Ry. vs. U. S.*, 32 Sup. Ct. Rep., pp. 2 and 3.) The hours of labor of the employees of railroads engaged in interstate commerce are prescribed by Federal Statute and this law has completely substituted all State laws on the same subject. (*State vs. T. & N. O. R. R. Co.*, 124 S. W., 985.) It is perhaps only a question of a few years when the stock and bond issues of such corporations will be supervised and controlled by Federal law. Consideration of the above matters shows how wide a field Congress and the courts consider to be open to legislation by Congress in the regulation of commerce. This is nothing new, however, in principle, but only in application. Under the right to regulate commerce the Supreme Court in years past has sustained legislation by Congress regulating the registry, enrollment, license and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; the rights and duties of seamen; the limitations of the responsibility of ship-owners for the negligence and misconduct of captains and crews; in the case of boats plying the navigable waters of the United States (even when engaged alone in intrastate traffic), the inspection of their hulls and boilers, the licensing of the officers, the carrying of prescribed lights and giving and answering prearranged signals, the maintenance of means for the preservation of life preservers, life rafts and the like, as otherwise the safe navigation of those vessels engaged in interstate or foreign commerce could

not be secured. The right to regulate commerce has sustained legislation imposing a duty on every person coming from a foreign port to this country; establishing qualifications and conditions for masters, engineers and pilots of vessels; it has established rules, comprehending the rights and duties of seamen and owners of vessels; and is the basis of the pure food and drugs act of recent years. (See *Sneed vs. Central of Georgia Ry. Co.*, 151 Fed., 608, for a collection of cases and legislation.) Perhaps the decision which has stated most plainly and in a far reaching way, as if laying the basis for decisions to follow what is meant by the authority of Congress to regulate commerce is *Mendou vs. New York, N. H. & H. Ry. Co.*, 32 Sup. Ct. Rep., p. 174, a decision sustaining the Employers' Liability Act of April 22, 1908. The Supreme Court has repeatedly held that the term "commerce" included all the instrumentalities of commerce, whether men or things; and that court has from the beginning held that the power to regulate commerce authorizes Congress to prescribe rules for carrying on that commerce. Bearing this in mind, the quotation from the *Mendou* case which follows, plainly shows how far reaching is the power of Congress over interstate commerce and all its incidents:

That Court says (32 Sup. Ct. Rep. 174):

"Interstate commerce—if not always, at any rate when the commerce is transportation—is an act. Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable, or more efficient. The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted; if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly or unsafe or otherwise inefficient; and if the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous, those bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less

reliable, less economical, and less secure. Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such legislation bears, or, in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act."

Accepting this as one of the last and a most deliberate and comprehensive statement by the Supreme Court of the United States of what authority is included within "the power to regulate interstate commerce," let us analyse the decision and apply it to the subject in hand. Very much the larger weight and volume of commerce in the United States is either interstate or foreign, and entirely within the control of Congress. In the State of Texas our cotton, for example, is almost entirely shipped either to foreign countries or to other States; the same is true of our cattle, sheep wool, lumber, oil, fruit, rice, all the great productions of this State. When it comes to our consumption, by far the larger part of the manufactured articles used and consumed in this State are brought from other States of the Union. Our interstate and foreign commerce certainly outweighs very much the purely local and interstate commerce of the State. This is perhaps largely true throughout the United States. Let us see, therefore, what the Supreme Court of the United States has said—the men and the things, the people and the corporations, engaged in this commerce are instrumentalities of interstate or international commerce; authority to regulate this commerce authorizes Congress to do anything which in the exercise of a fair discretion it may deem appropriate:

- (1) To save the commerce from prevention or interruption.
- (2) To make the commerce more secure, more reliable or more efficient.
- (3) To prevent the destruction of either the agents or instruments of the commerce, that is of either the men or the corporations or other instrumentalities involved.
- (4) To insure that the agents and instruments are of the right kind and quality.
- (5) To insure that the conditions under which the agents and

instruments of the commerce do the commerce are not wrong or disadvantageous.

(6) To control and regulate the conditions under which the agents and instruments of the commerce perform the work of the commerce where such legislation affects the reliability, promptness, economy, security, or utility of the interstate and foreign commerce.

Let us reduce this general statement to a bill of particulars—Congress can determine the conditions under which corporations and individuals can engage in interstate and international commerce; it can determine the form of the corporate organization of the corporations engaging in this commerce; it can, if deemed advisable, require them to be incorporated by the Washington government; it can supervise and validate the stock and bond issues of such corporations; it can by the instrumentality of an administrative board exercise a general supervision and control over such corporations, and to a large extent over individuals engaged in the commerce to see that it is conducted in accordance with the laws and with honesty; it can determine the rights and liabilities of persons engaged in such commerce and growing out of such commerce to third persons; it can determine the measure and extent of the liabilities of corporations, and persons engaged in such commerce, to their employees growing out of injuries suffered in the service; it can legislate in a proper case as to the hours of labor of such employees. In fact, it is difficult under these decisions to imagine any matters or conditions directly affecting interstate and foreign commerce which Congress is not competent to legislate upon.

It is easy to see that in process of time the inadequate and variant laws and legislation of the States on these subjects will invite the legislation of Congress, if for no other reason, to bring about uniformity; and that in process of time we are destined to have a very large field of what Blackstone calls in its larger sense the municipal law filled up and occupied by a system of National jurisprudence uniform from one end of the country to the other.

The political and social consequences to arise from this would form a very interesting subject for discussion. This paper, however, in stating the legal consequences, has already reached sufficient length.

# **"PATENT LAW AND PROCEDURE."**

PAPER BY

HON. JOHN M. SPELLMAN  
OF THE DALLAS AND CHICAGO BAR.

*Mr. President and Gentlemen:*

I appreciate your generous invitation to address you today on the subject of "Patent Law and Procedure." It will be impossible in the brief time at our disposal to consider so great a theme in its fullness, but I will speak briefly of the origin and nature of our Patent system, its objects and purposes, and its application to present conditions and allude to certain much needed reforms, both in law and procedure. These reforms will, in my judgment, give greater strength and conclusiveness to Letters Patent when the Government has granted them. I also advocate changing the cumbersome forms of present procedure in such manner that the novelty and validity of a patent may be determined by certain speedy and inexpensive methods. I shall also refer to the English system of monopolies of which our Patent system is the outgrowth.

Under the present system of procedure in vogue in the Patent Office, and the equity rules obtaining in our Federal Courts, which have exclusive jurisdiction in Patent cases, the delays incident to determining the issues raised in a Patent suit have brought a Patent situation which is little less than chaotic. These changes in procedure are designed to broaden the protection of the inventor and the manufacturer who acquires an interest in the invention, and will also shield and protect the inventor from any wealthy antagonist, who seeks to appropriate his invention without compensating the inventor.

The present system affords ample opportunity for the "powers that prey" to successfully pirate an invention. A high official in the United States Patent Office on one occasion said to me, while we were discussing the question of the extent of patent protection awarded to an inventor that, in his opinion, "Congress should pass a law making it a criminal offense for any person or corporation to knowingly appropriate or infringe a

patent." These are strong words when their source is considered, but under the present system an ordinary inventor has but little chance in maintaining rights under his patent as against a wealthy infringer.

#### SYSTEM OPPRESSIVE TO OWNERS OF PATENTS.

It is a notorious fact that a powerful corporation can so vex and harass an impecunious inventor by dilatory and obstructive proceedings in the Patent Office, owing to technical rules and the inordinate number of appeals, and the loose and unbridled methods for taking testimony resulting in an enormous expenditure of money, as to utterly deprive the inventor of any financial returns from his invention and plunge him into hopeless debt. And if through any strange fatality, he should finally win and emerge from the maze of contests in the Patent Office, the proud possessor of a Patent issued by the Government with the Great Seal thereon, his ancient enemy can infringe the patent and the inventor, in order to protect his Patent, must bring a suit in equity in the Federal Court, alleging infringement and pray for appropriate relief. Then ensues a long and protracted litigation in the Federal Courts, and under the present system of appeals, with no effective remedy in sight. (I will speak presently of the crying necessity for changes in this system of Patent appeals).

#### THE NATURE AND ORIGIN OF PATENTS.

A patent is a true monopoly, and is the only monopoly recognized under our laws. Patents had their origin under the old English common law in the royal grants by which monopolies in trade and manufacture were conferred upon a few favored subjects of the British crown. These monopolies were granted by public letters under the Great Seal, and were addressed to the people at large. The term "Letters Patent" is derived from the Latin words *Litterae Patentes*:

#### DEFINITION OF A MONOPOLY.

A monopoly may be defined as a franchise, created by the sovereign power of a state, conferring upon an individual, asso-

ciation or corporation, the exclusive right to make, use and sell a particular article, and also includes the absolute right of exclusion of all others from participation in the manufacture and sale of the article covered by the monopoly.

#### ROYAL PREROGATIVE GROSSLY ABUSED.

In Engand, the royal prerogative exercised in conferring these grants, was grossly abused, and the sale of monopolies became a common expedient resorted to by the Crown for the purpose of raising revenue, and in addition to granting patents to inventors covering their new discoveries and inventions, these grants were extended to cover various articles of commerce, and in this way, the exclusive right of sale was limited and restricted to individuals and corporations, and many of the articles of prime necessity, as well as staples of commerce, were placed unreservedly in the hands of a few individuals and corporations. The injustice of this form of indirect taxation aroused the indignation of the people, and finally became an intolerable and insupportable burden to them.

#### ENGLISH PEOPLE REBEL AGAINST UNJUST MONOPOLIES.

The sturdy spirit of liberty and independence of the Anglo-Saxon people is strikingly illustrated in their rebellion against such unjust monopolies, and their indignation and resentment finally found expression in the Statute of Monopolies which was passed during the reign of James I in 1610. This Act had for its object the abolishment of all monopolies except those awarded to inventors and patentees, and by its provisions, the royal prerogative as to the creation of monopolies was limited to certain definite channels, and the boundaries within which it might be exercised were carefully specified. The statute declared all monopolies to be illegal, but specially excepted from its provisions "Letters Patent for the term of fourteen years hereafter, granted to the true and first inventor or inventors of any manner of new manufactures within the realm, which others at the time of making such Letters Patent should not use."

COMMON LAW OF ENGLAND BASIS OF PATENT LAW IN THIS  
COUNTRY.

By the adoption of the common law as the basis of law in this country, this same Statute of Monopolies is generally recognized as the source from which the Patent Law of this country is derived, and is the basis of our Patent system.

FEDERAL CONSTITUTION PROHIBITS MONOPOLIES.

Section 19 of Article II of the Constitution declares that "perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed." This provision was discussed in the case of *Ex parte Levy*, 43 Ark., 42-53-51. The Court said: "The monopolies which in England became so odious as to excite general opposition and infuse detestation which has been transmitted to the free states of America, were in the nature of exclusive privileges of trade granted to favorites or purchasers from the Crown, for the enrichment of individuals at the cost of the public. They were supported by no consideration of public good. They enabled a few to oppress the community by undue charges for goods or services. The memory and historical traditions of abuses resulting from this practice has left the impression that they are dangerous to liberty, and it is this kind of monopoly against which the Constitutional provision is directed."

DISTINCTION BETWEEN PATENT MONOPOLY AND ORDINARY TRADE  
MONOPOLY.

Combinations in the nature of modern trusts and monopolies are those which aim at the monopolization of articles of prime necessity and staples of commerce, and by large combinations of capital, they seek to stifle competition and enhance the price of the common necessities of life. They give nothing valuable in exchange for such right or privilege which is wrested from the people, destroying the free course of competition, and levying unjust tribute upon the masses of the people, and all must agree that but little progress has been made in liberating the people from the unjust exactions of these monopolies. The monopoly given by a patent differs from the character of



monopoly just described, as well as from the sense in which the word "monopoly" first came into the English language, where without anything at all, except the mere whim of a sovereign power, some extraordinary privileges were given to an individual. The man who holds a patent monopoly has earned the right to a monopoly, because he need not have invented the novelty unless he chose, and having invented it, he might have kept it to himself if he chose, and his fellow citizens and the community at large would be without the benefit of his discovery; therefore, there is nothing obnoxious to law or good morals in the fact that a patent secures to the holder of it, a monopoly for a limited period of time. *International Tooth Crown Co. vs. Hanks Dental Association*, U. S. 111 Fed. 916-17. A new and useful invention is not, under the laws of the United States, a monopoly, in the old sense of the common law.

UNITED STATES CONSTITUTION PROVIDES FOR THE ISSUANCE OF  
PATENTS TO INVENTORS.

Article I, Section 8 of the Constitution of the United States, provides that Congress shall have power to promote the progress of science and the useful arts, by securing for limited time to authors and inventors, the exclusive right to their respective writings and discoveries.

PATENT SYSTEM INAUGURATED IN 1790.

In 1790, Congress passed an Act inaugurating the Patent system of the United States. Under this Act, the duty of issuing patents was confided to the Secretary of State, subject to the approval of the Attorney-General, but the principal features of the present Patent system and the practice of the Patent Office was specifically created, and also the Commissioner of Patents and the other officials under him, which system has been maintained very much the same until the present day. This Act also provided for the examination system, which is the unique and distinguishing feature of the American patent practice. Previous to this Act, patents were granted upon mere application of the inventor, provided his invention was correctly shown and described, and without investigation as to the novelty

and utility of his device. This was the old English practice, and is the practice now followed by most foreign countries.

#### WHO MAY OBTAIN A PATENT.

Under our patent system, a "patent may be obtained by any person who has invented or discovered any new and useful art, machine manufacture or composition of matter, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application, and not patented in any country foreign to the United States on an application filed more than twelve months before his application, and not in public use or on sale in the United States for more than two years prior to his application, unless the same is proved to have been abandoned, upon payment of the fees required by law and other due proceedings had." This section of the Patent Statutes defines all the limitations that are imposed by law on the person or persons who may wish to obtain a patent. I will not say more in regard to the requirements of the Patent Office with respect to the proper subject matter of a patent, further than to say that the article which it is desired to patent must rise to the dignity of the invention, and pass beyond the boundaries of mere mechanical skill. It must also possess novelty and utility.

#### TERM OF PATENTS SEVENTEEN YEARS.

Under our Patent Law, patents are now granted to inventors for a period of seventeen years, and can only be extended after the expiration thereof by special Act of Congress. It is greatly to the credit of our National Congress that very few patents have been extended beyond the term for which they were originally granted. From what I have said, it will be clear that patents are issued for the term of seventeen years, and confer upon the patentee the exclusive right to make, use and sell the article containing the patented improvement during the term for which said Letters Patent are granted, and also carry the right to license others to make, use and sell the patented article.

## PATENT A CONTRACT BETWEEN INVENTOR AND PUBLIC.

A patent grant is in the nature of a contract between the inventor and the public, wherein the inventor surrenders his invention to the public upon condition that the public grant him the exclusive right to the manufacture, use and sale of his invention, and all privileges thereunder, for the term of the patent.

## UNITED STATES COURTS HAVE EXCLUSIVE JURISDICTION IN PATENT CASES.

The United States Courts have exclusive jurisdiction in patent cases, and all suits for infringement of patents, whether in law or in equity, and without regard to the citizenship of the parties, must be brought in the Federal Courts, and inventors may seek protection against infringers of their patents by suits brought in the United States Courts asking for an injunction restraining the infringers from further making, using and selling the patented article, and for an accounting of profits and for damages.

## AMERICAN PATENT OFFICE BEST IN THE WORLD.

The American Patent office may well be the pride of the American people, for it commands the admiration of the world, and is rightfully regarded as the finest and most efficient Patent Office in existence. It is by far the largest, and has a numerous corps of examiners, and has at present reached a very high state of efficiency, but like all other systems, the Patent Office has suffered because of the disposition of legislators and people generally, to reverence ancient customs and yield slavish obedience to immemorial usages, which all too often impede salutary and necessary reforms and innovations. This disinclination to change old methods has resulted in long and tedious delays in the handling of patent applications in the Patent Office, and has worked a hardship upon applicants for patents, but these conditions will be remedied, and our Patent Office will maintain its preeminent position among the Patent Offices of the world.

**PATENTS ISSUED HAVE ALREADY PASSED THE MILLION MARK.**

Already more than one million patents have been issued by the United States Patent Office, and the growth of the inventive genius of our country is shown in the fact that five hundred thousand patents had been issued up to July 20, 1893, requiring fifty-seven years to reach that number, while more than five hundred thousand patents have been issued during the last nineteen years.

**PROSECUTION OF APPLICATIONS FOR PATENTS BEFORE THE  
PATENT OFFICE.**

I will not go into details concerning the various steps in the prosecution of an application for patent in the Patent Office, but will say that all applications are carefully considered by a corps of skilled examiners and a search is made of the art to which the particular invention relates, to determine whether or not there is any improvement amounting to invention in the applicant's device over the structures shown and described in prior patents. If the Patent Office finds that the applicant's device is new and possesses novelty and utility, and he is fortunate enough to escape an "interference" which is the technical term used in the office to describe a proceeding which arises when two or more inventors happen to invent substantially the same thing, and whose rival applications are filed in the Patent Office at about the same time, the application is allowed, and the case is passed to issue and the Letters Patent are finally issued to the inventor, his heirs and assigns, granting the exclusive right to make, use and sell the invention for a period of seventeen years. The patent bears the Great Seal of the Patent Office, and is signed by the Commissioner of Patents.

**EXCESSIVE NUMBER OF APPEALS IN THE PATENT OFFICE.**

I have already referred to the prolix and confused system of appeals in the Patent Office and of the necessity for a change of old and cumberbersome methods. The Commissioner of Patents recently referred to this subject in the following language: "I desire again to invite the attention of the Congress to the urgent necessity for relief in the matter of appeals in this Office. As

I have recommended in former reports, I desire again to urge upon the Congress the great necessity for eliminating one of the appeals in the Patent Office. This is entirely in the interest of the inventor, who is now delayed frequently from one to three years, by taking an appeal to the Board-of-Examiners-in-Chief, which, in my opinion, is entirely unnecessary. If the three members of the present Board, together with the Commissioner, the first Assistant Commissioner, and the Assistant-Commissioner, were formed into one Tribunal and appeal should lie to this proposed new Appellate Court, it would result in a great saving of time and money to the inventors of the country."

#### A RECENT CHANGE OF GREAT INTEREST TO INVENTORS.

Prior to the enactment of a recent law, inventors had no way of recovering payment for their inventions where such inventions had been appropriated by the Government. The passage of this law enables the inventor to file suit in the Court of Claims and upon proper hearing and proof, the Government may be made to pay for the use of his inventions. The appropriation by the Government of inventions without compensation or way of redress to inventors, had the effect of discouraging inventions and inventors were forced, in many instances, to sell their inventions to foreign countries.

#### CAVEAT PROTECTION ABOLISHED.

"Caveat protection" under which the inventor was permitted to file sketches of an incomplete invention in the Patent Office has been recently abolished because, although the law had been in existence for some time, experience disclosed that it afforded the inventor no substantial protection. Patent protection may now be obtained only by filing a patent application.

#### EVILS OF PRESENT SYSTEM OF APPEALS IN PATENT CASES.

I have already made brief allusion to the difficulties encountered by the owner of a patent in stopping an infringer from practicing the patented invention. At the present time, the United States Circuit Court of Appeals (one in each of the nine judicial circuits), have final appellate jurisdiction of patent

causes, and while the decisions of any one of these courts is final as to that circuit, they have no force in any other circuit, and therefore, a patent may be held valid in one circuit and invalid in another circuit. How the procedure works out is pointed out by our eminent Brother, Mr. William Macomber, in discussing the litigation over the Eldred patent, as follows:

"Eldred owned the patent on an electric cigar-lighter. Kessler infringed the patent and Eldred sued him in the district of Indiana. The court held the patent void, so that Kessler could make, use and sell Eldred lighters anywhere in the Seventh Circuit. Kirkland was another infringer of Eldred's patent and Eldred sued him in the Western District of New York. On appeal the Circuit Court of Appeals for the Second Circuit held the patent valid and infringed;" so Eldred's patent was good in the Second Circuit, but void in the Seventh Circuit. Then Eldred sued Breitweiser, another infringer in the Second Circuit, who was buying his lighters of Kessler. Kessler then brought action against Eldred to restrain him from prosecuting Breitweiser or any one buying Kessler lighters. This case went to the Supreme Court, and that court held that as a court had once held Eldred's patent void as between him and Kessler, Kessler could make his lighters and sell them anywhere he pleased. Behold the situation! Here is a patent void in the Seventh Circuit, absolutely and finally valid in the Second Circuit as against any one except Kessler, void as against Kessler in the other circuits and valid or void as against any one else in any of the other seven circuits as one court after another might hold one way or the other. If I make an Eldred lighter in New York and he can catch me in that State, he can restrain me by injunction and mulct me in damages; but if, after I have made the lighter and before he can sue me, I move into his own State, I have perfect defense! This is not an isolated case. The Grant Rubber Tire patent is in a similar condition."

#### ADVOCATES ESTABLISHMENT OF A COURT OF PATENT APPEALS.

A bill has already been introduced in Congress to establish a Court of Patent Appeals to have final jurisdiction in all patent cases. When a patent is granted by the Government, it is effective throughout the United States, but when a patent is involved

in a suit which is brought in any judicial district, the final decision on appeal is rendered by the Circuit Court of Appeals of that jurisdiction. Such decision is effective only for that jurisdiction and has no legal effect in any of the other circuits, and frequently they are in direct conflict with each other. It seems clear that a tribunal should be established whose decisions will control the status of a patent throughout the entire country.

#### ANOTHER EVIL WHICH MUST BE REMEDIED.

The difficulty and excessive cost which an inventor encounters in endeavoring to establish the validity of his patent is enormous. The procedure in this regard must be greatly simplified and the cost materially reduced. There is a crying demand for cheap and speedy justice, for under the present system, the inventor of moderate means is placed at a decided disadvantage in coping with a wealthy antagonist, who infringes his patent, and who is familiar with "the law's delay" and the heavy expense incident to patent litigation.

The comments of Judge Hough in *Electric Vehicle Co. vs. Duerr*, 172 Fed. Rep., 923, can hardly be improved upon, and his remarks are thus quoted:

"It is a duty not to let pass this opportunity of protesting against the method of taking and printing testimony in equity current in this Circuit and probably others, excused if not justified, by the rules of the Supreme Court, especially to be found in patent causes and flagrantly exemplified in this litigation. As long as the Bar prefers to adduce evidence by a written deposition, rather than viva voce before an authorized judicial officer, we fear that the antiquated rules will remain unchanged, and expensive prolixity remain the best known characteristic of equity. But reforms sometimes begin with a contemplation of horrible examples, and it is therefore noted that the records in these cases as printed, bound and submitted, comprise thirty-six large octavo volumes." \* \* \*

The court then says that means should be found to suppress such abuses, which result in ruinous expense to litigants.

#### ADVOCATES ENLARGEMENT OF THE PATENT OFFICE.

Congress has been frequently importuned to enlarge the Pat-

ent Office, but up to this time, nothing has been done in that direction. The Patent Office is the one self-supporting department of the Government, and has at the present time a surplus of over seven million dollars to its credit. This surplus has been built up by the American inventors, and we insist that they are entitled to larger and more spacious buildings in which the Patent Office may conduct its affairs, permitting an increase in the office force which will insure promptness in handling applications for patents and overcome the long and tedious delays in the dispatch of business in the office. It is certainly due to the inventors of the country that the money which they have paid into the office be utilized for the purpose of erecting a building with ample facilities for expediting the work of the Patent Office. It will also be of great benefit to people of every class. Other countries have already recognized the necessity and have erected large and commodious buildings which are occupied by their Patent Departments. Commissioner Moore, speaking of the need of a larger and greater Patent Office, recently said:

“Another matter which should have the immediate attention of Congress is the great need of enlarging the Patent Office or erecting a larger and more commodious structure for the purpose. The volume of business in the Patent Office is enormous and the present building is entirely inadequate. The Patent Office has always been self-supporting since its institution and the inventors pay for its maintenance, and no citizen pays a dollar in the way of general tax to support it.”

#### NEEDS OF THE INVENTOR SHOULD ALWAYS BE CONSIDERED.

Everyone recognizes the value of a good invention and the blessings that have come to humanity through the inventive genius of the people. I feel a deep interest in the welfare of the inventor and I am always willing to assist in promoting his interests. Many people imagine that all inventors are cranks, but this is not true, for many of them are thoroughly practical and sound business men. It is not necessary for me to dwell upon the benefits that have come to the American people through the inventive genius of men like Edison, McCormick, Westinghouse and others too numerous to mention. Of all inventions, the McCormick reaper holds a preeminent position because it



cheapened the price of bread which was a blessing to the human race. Few realize that a vast proportion of the wealth of this country is represented by patented specialties. It has been truly said that seventy-five per cent of the wealth of this country is represented by patented specialties.

#### CONCLUSION.

I have endeavored to give a brief history of the origin of patents, their application to present conditions, and I have also endeavored to point out certain defects in our system of law and procedure and have suggested reforms which, in my opinion, will greatly improve the efficiency of the system and afford substantial protection to inventors, manufacturers and others interested in patents and matters relating thereto. The reforms I have advocated should be investigated and demand for reform made by industrial associations of all classes. Bar associations should memorialize Congress, as has been done by the American Bar Association and inventors should take such steps as may be necessary to bring these questions before their representatives in Congress.

My friends, I feel that I have already too seriously trespassed upon your time and patience, although I feel that I have barely touched upon the theme which is the subject of my address; but perhaps I may have opportunity on some future occasion to dwell at greater length upon some of the questions which I have only very briefly considered in this address. I wish you to know that I appreciate to the fullest degree your kind and thoughtful invitation to speak to you today on this subject and I deem it a high and honorable privilege to address this honorable body, composed of my brother lawyers of my native State. Your courtesy, confidence and good will is gratefully acknowledged. Mr. President, and gentlemen, I thank you.

# TEXAS BAR ASSOCIATION BANQUET TENDERED BY THE GALVESTON BAR

AT HOTEL GALVEZ, GALVESTON, JULY 3, 1912.

## TOASTS

HON. J. W. TERRY, *Toastmaster.*

*Our Supreme Court*.....HON. T. J. BROWN  
*Our Court of Civil Appeals*.....HON. T. S. REESE  
*Our Sister States*.....HON. ALBERT W. BIGGS  
*The Texas Bar*.....HON. JOHN T. DUNCAN  
*The Federal Judiciary*.....HON. ALLAN D. SANFORD  
*The Ladies* .....HON. C. H. JENKINS

## MENU

### CANAPE A LA RUSSE

SALTED ALMONDS

### CLEAR GREEN TURTLE

OLIVES

### FILET OF GULF TROUT, CARDINAL

CUCUMBERS

### BONED SQUAB CHICKEN, STUFFED

POTATOES RISOLE

GREEN PEAS

### TOMATO SALAD, MAYONNAISE

### NEAPOLITAN ICE CREAM

ASSORTED CAKE

*Whiskey Cocktail*

*Sauterne*

*Pommery and Greno Sec*

*Apollinaris*

COFFEE

*Perfectos*

**PROCEEDINGS AT BANQUET, JULY 3, 1912**

THE TOASTMASTER (HON. J. W. TERRY): As I have read history, the toastmaster, like the court jester, has never been held strictly accountable for what he says or does, and is not expected to say anything sensible. It is fitting that the members of an intellectual craft should come together at intervals, abandoning all cares and thoughts of clients, and, dealing only with abstract propositions, permit good fellowship and revelry to flow unrestrained. We of the Galveston Bar again welcome you among us. We have crucified the fatted calf and have opened the doors and windows of the wine cellar. (Laughter.) Lord Byron, in his poetic way, said that men, being reasonable, must get drunk. We hope that those of you who have the Byronic feeling tonight will indulge it without reserve. (Laughter and cheers.) We, your hosts, will see that the wounded are cared for. (Laughter.) I made the preliminary statement about the privileges of the toastmaster so that I may be protected in the event unwittingly I should tread too violently on any member or branch of members.

In our business sessions we have heard much about the Supreme Court of Texas. Yet it is such a great tribunal, so near to our hearts, and so dear to the aspirations of some of our members (laughter), in whose opinions, eccentric though at times they seem to be, we have such vital interest, I do not believe I will weary you if I resurrect the Supreme Court and present it to you for a few brief moments. Our Supreme Court was organized under an act of the Republic of Texas, approved in December, 1836. It was first composed of a Chief Justice elected by the Congress of the Republic, and the four district judges. Just imagine the State of Texas, at that time a Republic, with four district judges. The first published opinions of the Supreme Court were rendered beginning at the January term, 1840, in the volume we refer to as Dallam's Decisions. After the expiration of a few years the Supreme Court was divorced from such intimate relationship with the trial courts, and the District Judges were no longer permitted to sit in this august tribunal, and thereafter, with the exception of a few years after the war, when the court consisted of five members, it has had a membership of three. Until 1876 it enjoyed both criminal and civil jurisdiction. Since then it has been spared the criminal. I suppose it has that much to be thankful for. (Laughter.)

We have had many great members of that court. They have distinguished themselves as jurists, and some of them have been distinguished in the fields of statesmanship. As indicated, beginning with the historic year 1836, and omitting the period of reconstruction, when we did not exactly admit that we had a court at all (applause), we have enjoyed the privilege of this great court to this present hour, and I, for one, am horrified at the idea of its abolition. I can not follow

the crusade for reform when it comes to abolishing our Supreme Court. I fear the result. Under our present system of jurisprudence, when the Court of Civil Appeals renders a sensible opinion, it is approved by the Supreme Court, and sent forward throughout the world as a conveyer of intelligence. But what will happen if our Supreme Court is abolished? I fear that we will fall to the level of what they call the Appellate Division in the State of New York, of which a few of us know nothing, and probably would not profit if we knew anything. Indeed, it would destroy ambition. Under our present system the members of the Appellate Bench soothe their weary hours with the thought that they will sometime be promoted to a situation on the Supreme Bench, and if they will accept my suggestion and increase the membership of the Supreme Bench, their hours of anticipation will be happier. (Laughter.) If you cut off from the members of our Courts of Civil Appeals this chance of promotion, I fear it will dull the intellect, and I dare not picture what might follow.

During the existence of our Supreme Court, from 1836 to the present date, there has only been one charge preferred against the integrity and dignity of the Court, and that was not a serious charge. It involved the idea of a leak. Now, we have a vegetable called a leek, that is not only easily cultivated, but easily digested. The water-cooler sometimes leaks, and even the beer keg has been suspected of losing some of its contents (laughter). Although this was such a mild and inoffensive accusation, brought against our great tribunal, I am sure that the combined bosom of the Texas Bar swelled with pride on witnessing the dignity, and rapidity, and rigor with which the Court corrected that suspicion and administered justice to the defendant. (Laughter.)

Now, gentlemen, if you will allow me to be serious with you a moment, from the time when the Court was constituted by Chief Justice Willie and Justices West and Stayton in 1882, to a year ago, when it was comprised of our honored Chief Justice (then Associate Justice) Chief Justice Gaines and Associate Justice Williams, there were ten men, including those named, who were on that Bench. Of those ten I find, in looking over the record today, that five of them resigned in justice to their families, because the salary was inadequate, and they were unable to support those dependent upon them. You will doubtless recall the names of the five—Judge Willie, Judge Robertson, Judge Henry, Judge Williams and Judge Denman. The litigants and the people of the State, on account of this inadequate and niggardly pay, were deprived of the experience and the ability those men had developed on the Bench, and I mention this with the suggestion that I believe it is the duty of every member of the Texas Bar to interest himself in securing adequate salaries for our judges from the Supreme Court down. (Applause.)

Among the members of that great tribunal, in my humble opinion,

there have been none who have exceeded in ability and devotion to duty our honored Chief Justice, who is with us tonight, and his immediate predecessor, Chief Justice Gaines. (Applause.) Our Chief Justice has recalled the fact in one of our business sessions that Judge Gaines had the longest period of service on that bench, and he next. It is with honor and pride that I present the Hon. T. J. Brown, the Chief Justice of the Supreme Court of Texas. (Applause.)

“OUR SUPREME COURT.

HON. T. J. BROWN.

*Mr. Toastmaster and Gentlemen of the Bar Association:*

I can not adequately express my pleasure in being the representative of the Supreme Court of our State on this occasion. As such representative and for that Court I wish to express their appreciation of the kind words of commendation spoken by our honored toastmaster and also to you for your courteous treatment of me as the Chief Justice to that Court.

The Spanish civil law was in force in the territory from which Texas was severed and converted into an independent Republic, and property rights acquired under those laws were necessarily to be preserved under the new government, which required much learning in the Supreme Court to harmonize the conflicts that arose out of the adoption of the common law.

The Supreme Court of the Republic was composed of a Chief Justice and the judges of the District Courts, all of whom were elected by Congress. Thomas J. Rusk was the first Chief Justice who presided over that Court, his predecessor having died before the Court held a session. Dallam's Digest contains evidence of the ability of that Court, and the Chief Justice was even more distinguished as a statesman.

The Constitution of 1845 provided for a Supreme Court, consisting of a Chief Justice and two Associate Justices, to be appointed by the Governor and confirmed by the Senate, but in 1850 the judges of all courts were, by amendment to the Constitution, made elective. The Governor appointed John Hemphill Chief Justice and Abner S. Lipscomb and Royal T. Wheeler to be Associate Justices. These were among the ablest lawyers of their day and their opinions are now acknowledged as sound and authoritative.

May I trespass upon your patience to call your attention to the fact that in that Constitution courts were given jurisdiction of “all suits, complaints and pleas whatever without any distinction between law and equity.” By simple petition and answer litigants could secure their rights, whether legal or equitable. So far as I know, this was the first instance in which such jurisdiction was conferred, and it devolved upon those great lawyers to develop the new system, which they did

in a masterly way. The litigant in Texas has never been sent out of one court to another to secure his rights. When a youth I came into contact with Judges Lipscomb and Wheeler, and, young as I was, I was impressed with their purity of character and life, as well as their intellectual powers.

It would consume too much of your time for me to dwell upon the character and capacity of the different judges who have held places upon our Supreme Court. There has been none that were unworthy of confidence nor wanting in respectable ability. Judge Hemphill was elected to the Senate of the United States in 185— and Judge Wheeler became Chief Justice of the Court, which position he held until his death in 1865. He was a great man intellectually and as good as he was great. After the war between the States our Constitution was so amended in 1866 as to create a Supreme Court of five judges to be elected by popular vote, and Hon. George F. Moore was chosen Chief Justice with Richard Coke, S. P. Donley, Asa H. Willie and George W. Smith as associates. Each member of that Court was distinguished as a lawyer and as a judge, although their service was short. The iron hand of military power was laid upon our State government, our officers removed and our judges replaced by others not of our choice. Of that court I have nothing to say; it created a hiatus in our judicial history. In 1873 Texas was restored to the control of her citizens and elected Richard Coke Governor, who appointed as judges of our Supreme Court Oran M. Roberts, Chief Justice; Reuben A. Reeves, Thomas J. Devine, George F. Moore and W. P. Ballinger, Associate Justices. The last named did not serve and Peter W. Gray was appointed to fill his place. Confidence in the Supreme Court was restored, for the men who were selected were true and tried, both in character and capacity.

This was an era of changes in all departments of government. In 1876 another convention was assembled which submitted to the people a constitution setting aside that which was imposed on them by military power and restored the Supreme Court with a Chief Justice and two Associate Justices, to be elected by the qualified voters. The familiar names of Oran M. Roberts, Chief Justice, with George F. Moore and Robert S. Gould, Associate Justices, again appear as the choice of the restored State government. I am a believer in an elective judiciary and the history of our Supreme Court by the long continuance of judges in service sustains the position that the people can be trusted to reward faithful service when the judge's work has become known to them. I would prefer to risk the people rather than any politician.

In 1878 Judge Roberts was elected Governor and George F. Moore became Chief Justice, Judge M. H. Bonner being elected Associate Justice. Judge Moore was disabled for some time by an affliction of the eyes and resigned in 1881, when Judge R. S. Gould was appointed Chief Justice of the court and John W. Stayton received the appointment as Associate Justice. In 1882 Judge Asa H. Willie succeeded

Judge Gould as Chief Justice and Charles S. West succeeded Judge Bonner, the court being thus composed of Willie, Stayton and West. Judge West died and Sawnie Robertson was appointed to the vacancy, but he declined to be a candidate at the next election and Judge R. R. Gaines was elected to that place in 1886. Chief Justice Willie resigned in 1888 and John W. Stayton was appointed Chief Justice. A. S. Walker was appointed Associate Justice and was succeeded by John L. Henry, who resigned in 1893, and was succeeded, through appointment, by your humble servant.

I have been thus tedious for a purpose, that is, to support my claim that the voters will reward faithful service on the Bench, and in confirmation of my assertion I will mention the fact that R. R. Gaines served on the Court for twenty-four years and six months, being re-elected at the expiration of each term of service, without opposition, and your speaker was elected in 1894, and, successively at the expiration of each term of service, to the present term, without opposition. Since the organization of the Court in 1846 to this time but two judges of the Supreme Court have been defeated for re-election. If the offices had continued to be filled by appointment I believe that would not have been the case. The danger confronts us of having the election of judges involved in politics, after which there will be no more such as Moore, Roberts, Stayton and Gaines to serve on the Bench, which has been so honored in the past. Such men will not enter into a political scramble for the office. Although there have been frequent changes upon the Court, it has maintained at all times its high standard. I have served with seven different judges and I feel confident in saying that my associates have each and all been able and true.

The time has not come for Judge Gaines to be fully appreciated. I believe that he has more opinions in the reports than any other judge, because his term of service was longer and he was industrious. His opinions, for sound reasoning and correct conclusions, will compare with the best. His style is judicial.

Judge Stayton was a tower of strength to the Court intellectually and morally; his work testifies to his superiority. Judge L. G. Denman was possessed of very fine qualities as a judge. He was earnest in his efforts to be right and in his short service wrote some extra good opinions. I parted with him in sorrow, but it was his duty to resign.

I have been so fortunate in my associates that I dreaded each change, but in Judge Denman's successor the State was fortunate in the appointment of Judge F. A. Williams, whose service has not been second in value to any. Duty to his family caused Judge Williams to retire. His salary was inadequate to his needs.

Of those now upon the Court and Judge Ramsey I can only say with propriety that I have found them to be worthy and congenial. There

has been no discord in the Supreme Court since I have had the honor to serve upon it. May it ever so continue.

Brother lawyers, our profession charges us with important duties to the State and I am glad to say that during more than fifty years of association with the lawyers of Texas I have known few who were dishonest or unreliable in their practice. There is now a spirit of criticism in the press and with some people and broad charges of wrong-doing is charged against lawyers and courts without specific charges or naming any court or lawyer. This is not new. I have heard it more or less for half a century, but I assert without the fear of contradiction that the lawyers and judges will compare favorably with any and all classes of citizens and officers. (Applause.)

In conclusion I exhort the Bar to come forward and aid in the correction of the evils which do exist. Support the judges and make the courts safe resorts for seekers after justice. I heartily thank you for the great pleasure I have had in this meeting, which will mark a valued occasion in my official life. (Applause.)

#### HON. W. C. McKAMY.

*Mr. Toastmaster:* With your permission, and without taking but a minute of this splendid meeting, and without intending to break in upon its brilliant program, I desire to say that I have listened with a great deal of pleasure to this distinguished jurist in his toast upon the Supreme Court. I know that you have all enjoyed, as I have enjoyed, hearing the names of those great and distinguished men, many of whom we know personally, and whom we all love. I have enjoyed listening to his toast upon the Supreme Court. I now desire to offer a toast to the Chief Justice of the Supreme Court of Texas (applause), a man who for so many years has served the people in so many capacities, and against whose honor and integrity never has the slightest breath of suspicion rested. May he live many, many years, and walk among us, the inspiration of all young men, and a benediction and a blessing to all who may come within the scope of his influence and power. The Chief Justice of the Supreme Court of Texas! (Applause.)

#### THE TOASTMASTER.

We all love the members of the Court of Appeals—that is, those of them we are all well acquainted with—the Civil Court of Appeals. (Laughter.) I am quite well satisfied, and I am sure you are, that the laborer is worthy of his hire, and we believe that the judges of our Courts of Civil Appeals are underpaid. However, the suspicion of underpay is not quite so strong in that case as in the case of the Supreme Court. (Laughter.) Notwithstanding the veneration and love we have for the Courts of Civil Appeals, the average lawyer, I believe, finds him-



self in great trouble whenever he gets into that Court. (Laughter.) If the opinion of the court happens to be in his favor, he has a feeling of exultation, bordering almost on a desire to celebrate. (Laughter.) For a period of sixty days he is in a great state of satisfaction with himself and the judges of the Court of Appeals, and then on some morning at the breakfast table he reads those dreadful words in the newspaper, "Application for writ of error granted." (Laughter.) If the opinion of the Court of Civil Appeals happens to be against him, he is in a wretched and deplorable condition. He realizes that he is in a state of impotency; that he, after having exhausted all efforts, has failed to appeal to the intelligence of three bricks (laughter), and because of an imaginary fear that the Supreme Court may have thought he may not have sufficiently enlightened this tribunal, he is required to file a motion for rehearing, in which everything must be rehearsed and restated and put up to these learned gentlemen again (laughter), as though, by reiteration, in some sort of legerdemain, their intelligences might be reached. (Laughter.) After all that has occurred, in trying to reach the Supreme Court, he must state these propositions all over again, and refer to the record, and this situation is the only one that appeals to the average lawyer to enter upon a propaganda for the abolition of one of these Courts or the other. (Laughter.) It becomes a hard problem with us which one we want to abolish. (Laughter.) Now, we all love and reverence Hon. T. S. Reese, and he knows more about these Courts of Appeals than we do. (Laughter and applause.)

#### OUR COURTS OF CIVIL APPEALS.

BY HON. T. S. REESE, ASSOCIATE JUSTICE, FIRST COURT OF CIVIL APPEALS, GALVESTON.

*Mr. Toastmaster and Gentlemen of the Bar Association:*

I had hoped I had not yet reached the stage where men had begun to reverence me. (Laughter.) Gentlemen, I came to this meeting of the Bar Association with a distinct grouch. I had been reading so much lately with regard to the shortcomings, the derelictions, and the various infamies, in fact, that had been committed by the courts, and especially by the Courts of Civil Appeals, that I had become somewhat sore about it. I had got to that point where when I was introduced to a stranger as a judge of the Court of Civil Appeals I felt like apologizing for it. (Laughter.) I really felt like taking the gentleman aside and telling him that although I was a judge of the Court of Civil Appeals, nevertheless I claimed to be an honest man and a gentleman. (Laughter.)

Gentlemen, we have up at the head of our stairs in the Court of Civil Appeals a notice, that I think the clerk stuck up there, in large letters: "In Consultation. No Admission." I have sometimes felt like

taking that down and substituting for it a notice that is sometimes seen in a dance hall in the West: "Gentlemen, don't shoot the fiddler. He is doing the best he can." (Laughter and cheers.) But I am feeling better, gentlemen. (Laughter.) I have not heard so many pleasant things said about the Courts of Civil Appeals in years as I have heard today. It has been exceedingly gratifying to me, and to some extent my courage has returned. (Applause.)

What do you want to know about the Courts of Civil Appeals, the toast to which I am put up to respond. You know as much about them, probably, as I do, except with regard to their esoteric workings, of which probably you do not know a great deal, and do not care to know a great deal. It is the result, the outcome, in which you are interested, and not the manner in which the result is arrived at. But, oh, hang the Courts of Civil Appeals. (Laughter.) (I do not mean to hang the judges of the Courts of Civil Appeals.) Let's talk of something else. Gentlemen, we are living just now in a revolutionary age, a revolutionary time, a revolutionary year. In fact, there has never been anything like it. There has been more movement—whether it is progressive or retrogressive depends upon the point of view, but certainly there has been more movement—in the last twelve months than there has been in fifty years before. It has been in everything. It has been in all parts of the world. In the Far East we find the yankees of the Orient seizing the Hermit Kingdom by the scruff of the neck and bidding it sit up and take notice, after two thousand years of isolation, of what is going on in the world. We have seen China—China! Fancy China—waking from a thousand years of sleep and adopting a republican form of government—and not only that, but with woman suffrage as a corner stone of it. (Laughter and applause.) Think about that. Consider a moment what a change that involves! China, after all these centuries of sleep—turning out the Manchus, pitching the peacock throne into the Yellow Sea and adopting a republican form of government, such as we have, and adopting woman suffrage, such as we will have, I hope, some day, as the foundation of the republic. (Applause.) Coming a little further, we find in England the House of Lords, that hoary excrescence on the body politic, after trembling for a short while upon the verge of destruction, being allowed to live a while longer provided it ceases to make itself obnoxious. We find Ireland about to realize the dream of centuries, in some measure of home rule. On our western border we find, in our sister Republic of Mexico, the despotism of Díaz overturned, and the government of Mexico in the hands of a man who will, if he is let alone, bring to that distracted country, we hope, some measure of peace and prosperity. (Applause.) Not only is this true in all countries, gentlemen, but it is true in all departments of life. In science, Mother Shipton's prophecies, once ridiculed as absurd, have been verified. We find men flying through the air. Aerial navigation has become so common that the buzz of the motor in the upper atmosphere hardly attracts the gaze of

the curious for a moment. We find wireless telegraphy become now a factor of commerce of every day concern, which attracts no particular attention. We find this movement in education, in literature, in religion. We find our friends the Presbyterians seriously discussing an amendment to the Westminster Confession of Faith. (Laughter.) We find the House of Bishops of the Methodist Church seriously discussing whether they will not raise the ban against dancing, and cease trying to substitute for progressive euchre, progressive mumble-peg. (Laughter.) But this spirit of unrest does not stop there. It has invaded the sacred precincts of the law, in contemptuous disregard of that divinity which doth hedge about the profession, and the irreverent public comes to us and says:

"Gentlemen, we beg to remind you that this is not your house. It is our house. You are tenants. We give you notice that if you do not clean up the premises, we will clean them up ourselves." (Laughter.)

Gentlemen, we may say what we please; we may indulge in all the flourishes we please with regard to submission to the clamor of the mob; there does not live in this country any institution that can stand against the concentrated force of public opinion (applause)—neither courts, nor lawyers, nor anything else—and it seems to me, gentlemen—it seems to me—that we would do well, we tenants of the premises, if we should go about the work of cleaning them up, because if the owner should undertake, in his present temper, to do it, he might do some things that we would not like. (Laughter.) That is on the general doctrine, gentlemen, of reform of procedure (laughter), with regard to which I have been considered somewhat of a crank for twenty years. I am not as lonesome now as I was twenty years ago. (Laughter.) I find lawyers in a little more receptive mood than they were twenty years ago, with regard to this particular subject.

Now, gentlemen, that reminds me that when your toastmaster asked me if I knew what I was going to talk about, I told him, yes, I knew what I was to talk about. He says, "What?" "About ten minutes," says I. (Laughter.) (Voices: "Go on." "We will extend the time.") Never mind about that, I have got all the time I want. I will not occupy your time much longer. I want to say this. I want to convey my sympathies and condolences to the noble army of standpatters. (Laughter.) I see one of them before me now, my gallant young friend from that city which sits upon the rim of civilization (laughter), where the tarantula is a household pet and the vinegerone is a parlor ornament. (Laughter.) I want to tell you, my young friend, gallant standpatter as you are, be of good cheer, keep up your courage, the worst is yet to come. (Laughter.) The negative pregnant has gone. The *absque hoc* is gone with it. The *damnum absque injuria* still lingers among us, but in a moribund condition (laughter), and that, too, will soon pass away. The rule in Shelley's case has become a myth. That old English judge who boasted that he would nonsuit a plaintiff for failing to cross a "t" or dot an "i" has been gathered to his fathers, and he

has left no successors in the Civil Courts, though his spirit still inspires the Court of Criminal Appeals. (Laughter.) But notwithstanding all this, the law will still live and lawyers will continue to "flourish in immortal youth unhurt amidst the war of elements, the wreck of matter, and the crush of worlds." (Applause.) I thank you, gentlemen. (Applause, laughter and cheers.)

#### THE TOASTMASTER.

*Gentlemen of the Association:* For many years the great majority of the Southern people considered the Federal compact as merely articles of partnership, subject to dissolution at the will of any member. That was the doctrine in which we were all educated, and we still conscientiously believe it, and ever will. (Applause.) Without a single word bearing on that construction added to the Constitution of the United States, it has left us. It departed through years of bloodshed and suffering, beyond the description of any human. We are now so bound up in indissoluble union with the other States of the Federation that we can not either kick over or under the traces. Hence, we have a far greater interest in the Sisterhood of States than ever before. With every coming year something is discovered wherein it is thought that the Federal Government can better regulate the thing than the individual state, and when the idea of an appropriation is in view the Federal Government is always appealed to. (Applause.) We find in the Baltimore platform severe protests about State rights, but we find so many counter propositions of things to be done by the Federal Government, that John C. Calhoun, reading the Baltimore platform, would not think that a vestige of State rights was left among us. It is a serious question today who is the greatest State righter, Honorable Bryan or Honorable Roosevelt. (Laughter.) I simply make these remarks to indicate to you what a feeling of affection, not only voluntarily, but necessarily, we today have (laughter), and what an interest we feel in the other States in the Union. (Laughter.) We have with us a learned lawyer, a polished gentleman, and a charming orator, from the State of Tennessee, to which we owe so much, and it is with pleasure, as you already know him, I again present to this audience Hon. Albert W. Biggs. (Applause.)

#### OUR SISTER STATES.

BY HON. ALBERT W. BIGGS, MEMPHIS, TENNESSEE.

*Mr. Toastmaster and Gentlemen of the Texas Bar Association:*

I am at a loss to know what I have to do with the change of the doctrine of States' rights. So far as I am concerned, Mr. Toastmaster, I think I can acquit myself of any charge upon that score. Back in

Tennessee we did all we could to break up the Union. Now, I was not there, you understand (laughter), unfortunately, as it turned out for the Confederacy. (Laughter.) But there was a man back in the good county of Gibson, that I am from, who fought just about such a fight to perpetuate the old doctrine of States rights' as I fear I would have fought if I had been there. He did not volunteer at the beginning of the war. I guess he thought it would either be over so soon that he could not get well started, or else he would wait until the others were worn out and then he would go in and give the final touch, but, at any rate, he waited so long that he was conscripted (laughter). They sent him to the army of that gallant cavalry leader, whose home was in the city from whence I came, the wizard of the saddle, General Forrest. (Applause.) In about thirty days he got back to Trenton, and was met on the street by old man Davis, who was too old to go himself, but who had sent many sons, some of whom never came back. Mr. Davis said to him, "John, I thought you joined the army." He says, "Yes, Uncle Henderson, I did. You know I allowed to go anyhow, but I was a little late getting off, and they came around and conscripted me, and they sent me down to that old General Forrest, and as soon as he heard of it he sent for me to come up there, and he says, 'Why wasn't you here before?' and before I could explain it to him he says, 'Off to the guard house and lock him up for thirty days.' When they let me out at the end of thirty days, I looked around, and as I didn't see anybody that knew me, or anybody that I knew, I deserted and came back home, and if old Jeff Davis can't whip the Yankees with the shove I have given him, he can go to hell." (Laughter and applause.) The subject that was assigned to me to-night, "Our Sister States," I was told by the toastmaster, could be made to apply to anything that I wanted to say, and like language it could be used to conceal the thoughts I intended to express.

I am delighted to have attended this meeting of this Association. I have been greatly pleased with meeting so many of the leading members of the Texas Bar. I have been charmed by this delightful city, and in short I have fallen in love with Texas. (Applause.) Your cordial hospitality, your generous welcome, and the royal treatment you have accorded me, will make me go back home and tell the boys that did not come to Texas in the early days what they missed by not coming. (Applause.) I can tell them another story, too, and that reminds me of the story that is still told in some parts of Tennessee, of the first family that left the mountains of East Tennessee for Texas. It is said that when the covered wagon pulled up to the top of the range that shut in the little valley of the Watauga, where nestled the first people who were governed by a written constitution that existed upon this continent, that they stopped to look back at the beautiful valley. Then they got out of the wagon to say good-byes to their friends. They told the Smiths good-bye, and they waved good-bye to the Browns, and then as they turned to drive off the old

lady took one farewell glance back at the crowd, and said, "Good-bye, everybody. Good-bye God. We are off to Texas." (Laughter and cheers.) But, Mr. Toastmaster, they found God in Texas, and as I have traveled from the northeastern portion of your State to Galveston, upon every hand, I have seen evidences of His lavishness, both as to your material wealth and as to the individuals that compose this great commonwealth. And as I say, when I go back I can tell them, as they have learned long, long ago, that the thought which the old lady expressed was a mistake, and that Texas, large in her dimensions, great and powerful in all of her resources, has as you have heard from the lips of your distinguished Chief Justice, yet a brighter crown and a greater glory, and that is the distinguished men whose names he recited. I was impressed, as he went from one to another, that as he paid this tribute to this man's ability, and that tribute to another's, yet of each and every one he said that he was an honest, an upright, and a God-fearing man, and that, after all, is the true measure of greatness in this country. (Applause.)

I do not intend to try, nor could I, if I did, following such distinguished speakers as those who have preceded me, hold your attention in a talk about the sister States that cluster around the great State of Texas. I am of the South, and for four generations, a Southerner. I am proud of this great and glorious land. I think the time has long since passed when we have to go to any other section of the country in order to find opportunities for our young men. I am glad to know that the people in other sections are fast learning of our resources, and are now giving to the young men the advice, "Go South." Wherever we go, however, we find some of our citizens, who left home to seek their fortunes in other parts of the Union. I think if they had stayed at home probably the legend which is told of a far east country might be applied to them. You probably have heard it. It is the story of a man who lived, I believe, in Persia, and on an evening as he was returning to his home, just at sunset, he looked down, and he saw approaching from the direction of a stream that flowed in front of his house a stranger. As is the custom of that country, he took the stranger into his home, and after he had fed him they sat down to talk before retiring for the night. Then the stranger took a diamond from his wallet and showed it to his host. It was the first one the man had ever seen. The stranger explained that one of them would buy a palace, and that a handful would purchase him a kingdom, and that he was searching for a lost mine. That night the host went to bed in poverty, for poverty, after all, is but discontent. The next day he sold his place, and after providing for his family until he could go in search of the diamonds of which he had been told by the stranger, he departed. I shall not undertake to give you the years of wandering, or the hardships which he endured, but old and broken, after many years, he returned and found that his place had passed into the possession of a former slave. That slave was rich and pow-

erful, for one day he say glistening in the sands of the stream that flowed in front of his door a diamond, and thus were discovered the richest diamond mines of all the world. So I have often thought, when we talk about going to other lands and to other climes, that here around us, we, of the South, possess opportunities that are unequalled in any other country. We have the climate, we have the soil, we have the people, and there is nothing that can stand in our way of a material prosperity that will exceed and excell that of any other part of the Union, and that will equal every demand which may be made upon us. (Applause. ) I hope that the time will come, and that I will live, Mr. Justice Brown, to visit your State when even your arid places shall blossom like a garden of roses.

I shall not, Mr. Toastmaster and gentlemen, detain you longer. I am just now very much in the condition of a young friend of mine upon his first appearance before the Supreme Court of Tennessee. He had made some notes which he expected to use in his argument, but he had mislaid them, just as I made my notes down here and my friend spilled a glass of water on them and erased them. So, when he had made as much of a speech as he could, he said to the court: "If Your Honors please, there were some other points I intended to make, but I have lost my memoranda and I have forgotten them." The Judge replied: "Mr. So-and-So, no doubt if you had said what you forgot, and forgot what you said, your client's case would now be in a better condition." (Laughter and applause.)

MR. R. E. L. SANER.

*Mr. Toastmaster:* I propose a toast to our sister State, Tennessee, and our honored guest of the evening. (Applause.)

THE TOASTMASTER.

We now have a subject that, except our wives, is the nearest and dearest to us all, and that is, "The Lawyer." I could talk here about the lawyer all night. There are many things that can be said about him. (Laughter.) But I do not want to anticipate anything, as I want to turn the subject over in its entirety to Hon. John T. Duncan, of LaGrange. (Applause.)

THE TEXAS BAR.

BY HON. JOHN M. DUNCAN, LA GRANGE.

*Mr. Toastmaster and Gentlemen of the Bar Association of Texas:*

I have been accustomed for something like a third of a century to address courts and juries, but I think this is the first time in my ex-

perience that I have felt what is known as embarrassment. I feel very much like I imagine a young girl feels when she receives her first proposal of matrimony.

With reference to the Texas Bar, that is a subject about which I am almost too full for utterance, but in order for me to approach this subject it will be necessary for me to say some things about the lawyer in a general way. I do not know whether to consider the lawyer as he appears to his client, or in the light that he appears to his brother lawyer, but this much can be said: The lawyer as he appears to his client might be a good deal like a woman who forms her opinion of the balance of mankind by her view of the husband that she has. (Laughter.) If she feels that she has drawn the capital prize in the matrimonial lottery, her judgment of the balance of mankind can not help but be flattering, but if she has been unfortunate, then her judgment might not be quite as flattering as it should be. It has been said that every client always believes that there is only one honest lawyer in the world, and that one is his lawyer; that every other lawyer except his own is the grandest rascal in the world (laughter), and from his standpoint, to some extent, that may be true. (Laughter.) Whenever we have a client that is wedded to us, that believes in us, he believes in us to the fullest extent of our worth, and his judgment is largely dependent upon the service and the results of the service that we have rendered to him. With reference to the lawyer's function in government, that great French statesman Montesquieu, in referring to government, and especially with reference to the government of America, said that we were unlike England, in that we had no class of nobility, that is, no patented nobility, but that in the American government the lawyers occupied the same relation to our government that the nobility of England bore to that government. Now, with reference to the lawyers of Texas and the Texas Bar, every lawyer who has received his license to practice law at the Bar of this State has received from this State in this form his patent of nobility, and it depends largely upon his appreciation of the integrity and honor of his profession as to what attitude he may assume towards the government of this State. To a certain extent the practicing lawyer of this State is a high priest. He belongs to that elevated priesthood that has been handed down to us from the tribe of Judah. If we are not better men when we go to our beds at night than we were when we arose in the morning, we have lived the day to a poor purpose. If we do not make the world better by our having lived in it we have not been worth the labor of our creation.

With reference to our clients, whenever they come in contact with us, whenever they need and receive our assistance or our advice, whenever we separate from them, we ought to make them better men than they were when we first came in contact with them. (Applause.) I have read in the Scriptures where it was said that the Master, when He was upon earth, abroad went casting out devils. I believe, as hon-



estly as I believe anything; that the relation of an attorney to his client is higher and closer than that of a minister to a member of his church. You will pardon me if I advert to a little incident in my own experience. I had a client come to me one night at midnight, and he woke me up, and he told me his trouble. He had murder in his heart, and he was asking my advice as to whether he should take the life of a certain person who he believed had invaded the sanctity of his home. I saw how determined he was. I saw that he was bent upon murder, but after a short talk with him I induced him to change his mind, and change his course, and I verily believe that I was the instrument on that occasion of casting out of that man a devil or a demon. I believe that is the function of every lawyer, and that when he comes in contact with his clients who are bent upon evil, or have evil purposes and evil intentions, his function is to take charge of him, advise him, and cast out of him the devil or the demon that possesses him. I really believe that of all the positions that are occupied by men the position of a lawyer is the most important with reference to governmental purity, social elevation, and social enjoyment. (Applause.) I believe that the lawyer, coming in contact with his client and with his clientage, will have a greater effect and a better effect in the uplift of society than any minister that is known to any of the churches of the land. (Applause.) I believe that if we do not make our clients better men after we have come in contact with them than they were before we came in contact with them, that our influence will amount to but little. I think that when we come in contact with our clients, when we give them good advice, when we give them pure advice, we make better men of them, and we are better men and better citizens ourselves. To some extent lawyers are judged by what we accomplish for our clients, and if we do not make better men of them it is our fault and not theirs. And lawyers can afford to starve rather than to give improper and unworthy advice to their clients. (Applause.) We ought to feel that we belong to that great priesthood, that we have a destiny to fulfill, and that when our clients look up to us and get proper advice from us, they will thank us for it to the longest day that they live.

Gentlemen, the time is growing late. I have not expressed myself as fully as I might on this subject, but I believe that the function of the lawyer is the highest function in the social compact, and that if we perform our duty and perform it like it ought to be performed, we will not only make better men of ourselves, make the world better, and be prouder of our profession, but we will make better citizens of those with whom we come in contact. The people as a general thing look up to the lawyers. They look to the lawyers for good advice and for a proper example, and we ought to give it to them. There are within this government of ours about one hundred million people. There are about eighty thousand lawyers. I believe, and I assert the fact to be, without fear of contradiction, that the in-

fluence of those eighty thousand lawyers within this government is worth more to the government and to the people than any other class within the borders of our great government. (Applause.) I think if we keep this up, if we make better men of our clients, and better men of the people we come in contact with, that we are fulfilling the destinies of our profession, and as said by that great French statesman-writer, Montesquieu, we will find, when we are through, that we will be a nobility that is worth something to our people, and we will hand something down to our country. (Applause.) I thank you. (Applause.)

#### THE TOASTMASTER.

*Gentlemen of the Bar Association:* When the plan of restoration of President Johnson was overturned by a brutal Radical majority of Congress under the lead of Thad Stevens of Pennsylvania, to what department of the government did the Southern people appeal for relief, and successfully? The Supreme Court of the United States. (Applause.) Beginning with *ex parte Garland* that court, with a fearlessness and a loyalty to the Constitution of the United States that almost seemed amazing, struck down, one after the other, the obnoxious reconstruction measures, and practically restored the liberties of the vanquished but unconquered Southern people. (Applause.) Suppose in those days we had had the doctrine of the recall of judges, or of judicial decisions, where would the prostrate Southern people have been? (Applause.) How any Southern man, who knows the history of reconstruction, can abandon his faith in constitutional limitations, enforced by a great and unflinching court, to protect minorities against the temporary brutality of passing majorities, passes my comprehension. I think that we of the South should require a great deal to shake our respect, faith and confidence in the Federal judiciary. I take pleasure in presenting to you, to discuss a subject of so much moment, Hon. Allan D. Sanford, of Waco. (Applause.)

#### THE FEDERAL JUDICIARY.

HON. ALLAN D. SANFORD, WACO.

*Mr. Toastmaster, Gentlemen of the Association:*

It is related of Lord Chancellor Lyndhurst that upon a certain occasion, when a young lawyer was addressing him, he began to say under his breath, "What a damn fool! What a damn fool!" As the young lawyer proceeded and gained the confidence of the Lord Chancellor, as well as his respect, the Chancellor began to say of himself, "What a fool I was! What a fool I was!" When the toastmaster suggested to me yesterday that I should respond to the toast, "The

Federal Judiciary" (with all due respect to him), I did not say, "What a fool you are, Mr. Terry," but I pretty nearly thought it, and as I rise tonight to respond to this toast, after having heard the very delightful responses of the other gentlemen, and especially after having listened to the encomiums of the toastmaster upon some of the members of the highest court of the Federal judiciary, I think, "Sanford, what a fool you were to accept the invitation." (Laughter.) Gentlemen, what I know about the Federal judiciary could be told in a very few words. What I do not know about the Federal judiciary, without giving it especial thought, and what I am not able to say about it tonight, without giving it especial study, is more than could be written in all the books of the Septuagint, and so I am not going to try to talk to you *about* the Federal judiciary, but I am going to talk *from* the Federal judiciary. The truth of the matter is I find myself tonight in very much the same situation as once surrounded a young man who was reared in my community in West Tennessee. This young boy was a son of old Brother Ike Clark, one of the brethren in the Methodist Church, who, when he prayed, sounded as though he had actually laid hold upon the horns of the altar and was at the feet of the Master Himself. He had an exceedingly wicked boy named Jim. Upon one of those happy occasions that they frequently have in the western portion of Tennessee known as midsummer camp meetings, this wicked boy Jim got religion. Shortly after that old Uncle Ike put his boy Jim to plowing in a new ground, behind a young mule. Any of you who have been raised on a Tennessee farm and have plowed new ground, about which you prairie people know nothing, know about what young Jim's experiences were. Along about ten o'clock in the morning, when the sun was shining hot and Jim was sweating—not perspiring—(laughter), when that plow would strike a root and young Jim's feet would swing corners with the boughs of the trees as he was trying to hold to the handles of his plow, he began to use blasphemous language, and about that time old Uncle Ike looked over the fence, and said, "Oh, Jimmie, Jimmie, my son Jimmie, I thought you had religion." Jimmie says, "Yes, paw, I thought so too, until you put me to plowing in this new ground behind this young mule, and then I found I was damn badly mistaken." (Laughter.) Gentlemen, if I ever thought I was capable of appropriately responding to this toast upon this occasion, after having listened to the delightful responses of the gentleman on my right, as well as those who sit on my left, I now think that I am in the position of young Jim Clark. (Laughter.)

Another happening in my country of West Tennessee that I am reminded of was this. In our community—I will put it in another community, because I do not want you to think it fitted mine, where I came from—there lived a people who were not exceedingly highly educated, and there moved into the community a man of high education and culture. He did not find a congenial spirit. Before a great

while it was noised abroad, and he heard it, that the daughter of one of the leading families in the community was coming home from boarding school, and he thought to himself that surely now he would find a congenial spirit. So, shortly after her return, he found occasion to call upon her and spend the evening, and during the course of the evening he broached every subject in which he thought possibly she might be interested, until towards the close of the evening, having seemingly failed to arouse any interest, he said to her, "Well, Miss So-and-so, in what did you graduate?" Immediately a blush mantled her cheek and her eyes sparkled, and she said, "Oh, sir, in white tarlatan and pink roses." (Laughter and applause.)

You know, the steam-roller hasn't got me exactly tonight, but I am sort of in the shape of the old negro, who on the witness stand was trying to tell about the accident which he had seen, in which a woman had been killed on a public railroad crossing. As usual, he began away off yonder, and would gradually come up to the subject, until finally everybody in the court room was completely worn out, the judge as well as the others. The judge said, "Now, Ephraim, get right up to the subject and tell what happened." Ephraim commenced away off again and gradually worked up to the subject, and the judge said, "Now, here, I have told you two or three times to get right up to the subject and tell what happened. Just tell what happened, right there, at that particular minute." Ephraim said, "Well, judge, I'll tell you, that injine just tooted and tuck her." (Applause and laughter.)

I want to tell you one more negro joke, and that is mighty far removed from the Federal judiciary. It is just about as far removed from it as I am tonight (laughter), although we now have perhaps a chance for the election of a Democratic President, and doubtless there are some among this audience who are now thinking of the possibilities of the next four or eight years (laughter), in connection with the Federal judiciary. Some of the members on that bench I believe are now growing rather aged, and they may retire, even if they do not pass over the great divide. Chief Justice White tells this story, which was always exceedingly interesting to me. That upon his father's plantation in Louisiana—I believe that was his native State—the negroes, a number of years ago, frequently got into difficulties with each other. On one evening about sundown three of them got into a controversy, with two on one side and one upon the other, and the one jerked out a pistol, and very naturally, of course, the two ran off, and as they ran off the one fired at them. Each of the two jumped behind a tree, and after the noise of the gunshot had passed away one of them peeped out and said, "Tom, did you hear dat bullet?" The other one said, "Hear dat bullet, nigger? I heard dat bulet twict." The first one said, "Twict? Why, what do you mean?" He replied, "I heard dat bullet de fust time when it passed me, and de second time when I passed hit." (Laughter and applause.) I thank you. (Applause.)

## THE TOASTMASTER.

*Gentlemen of the Association* There is one subject that is above all others, above our admiration for the grandeur of the mountains, above our love for the beauty of the flowers, or the sighing of the sea. This subject is described by the one word, "Woman." I am told that the Hon. C. H. Jenkins of Brownwood has been a faithful worshipper at her shrine, and I have the pleasure of introducing him. (Applause.)

## THE LADIES.

BY HON. C. H. JENKINS, ASSOCIATE JUSTICE THIRD COURT OF CIVIL APPEALS, BROWNWOOD.

*Mr. Toastmaster and Gentlemen of the Texas Bar Association:*

Tonight's experience recalls an incident of my early life. I was a boy, about nineteen years old, reading law in the city of Dallas. It had been advertised and heralded for weeks that the man loved of all Texas, Hon. John H. Reagan (applause), was to deliver the annual address at the Fair Association, but it so happened that he could not come, and the directors of the Fair Association were not aware of the fact until the morning the fair opened and the address should be delivered. A committee came to the law office where I was reading law and asked my preceptor to deliver the annual address. He said, "No, I can not do it." They said, "We have been to every man in the habit of delivering public addresses and they have all refused us, and the people are here, and they must not be disappointed. Somebody must deliver the annual address and we have come to you." He said, "No, I have had no notice; I can not do it," and turning to me he said, "Charlie, you deliver that address." I said, "Major, you refuse to deliver the address, and if you can not deliver it, how do you expect me to do it?" He said, "You have no reputation to maintain and nothing to lose." (Laughter.) He said, "Go and make them a talk," and I went in and made them a talk. Now, you read upon the program that a gentleman well known in this State, not only for his legal ability but for his eloquence, was to respond to this toast. After we were seated at this table tonight there occurred what has occurred to me all along down through life since I made the talk at the Fair Association. (Laughter.) Looking around and having exhausted themselves among those whom they thought would respond, the committee looked over here and they said, "There's Jenkins (laughter), he has no reputation to maintain (laughter); we will call on him." (Laughter and applause.) When they came to me I said, "No, I can not respond." I tried to get off, but they said, as they have always said, "We have tried everybody else (laughter), and none of these

men will attempt to respond to a toast without any preparation or thought about it, and we must have that place filled, and so, of course, you must respond, the others have reputations to maintain." (Laughter.) It reminded me of a statement I heard an old Confederate soldier make, when he was describing the events of the Civil War. He said, "Everybody was in the army, and them that wouldn't volunteer was made to volunteer." (Laughter.) And so, under these circumstances, I have volunteered. (Laughter.) Like the man of whom my friend from Tennessee told you, I have volunteered to respond to this toast.

However, I am not in the unfortunate condition of the gentleman of whom we have been told tonight, who lost his notes, because I have no notes. Speaking of that reminds me of the man who was a slave to his notes. Upon a certain occasion he was responding to the toast, "The Great Men of the World," the men who had shaped the affairs of mankind and had been potent in the destiny of the world's history. He had prepared his notes, and coming down along the line of illustrious men he said, "Gentlemen: In ancient times there was a man of genius, a man born to conquest. He was sent by those in power in his country to the far off frontier. He conquered the wild tribes of Gaul. He drilled an army that was invincible, and at the appropriate time he crossed the Rubicon. He seized upon the reins of power. He became the ruler of his country. Gentlemen, you will understand by my remarks that I refer to— to— (looking at his notes)—to— Julius Cæsar. (Laughter.) And in modern times there arose one who like a meteor shot athwart the sky of modern history. Coming into the service of his country when the Commune reigned, with a whiff of the grapeshot he banished the rule of the Commune. He became the leader of the army. He crossed the Alps. He conquered Italy. He was the hero of Austerlitz. He removed kings as pawns and set up kings of his own making. But at last he bowed to the power of England and the Allies, and his last days were spent upon the lonely isle of St. Helena. Gentlemen, you will understand, of course, from my remarks, that I refer to— to— to— (looking at his notes) to Napoleon Bonaparte. (Laughter.) But, gentlemen, 'peace hath her victories no less renowned than war.' There was another, who fought not upon gory fields, but who, looking out with prophetic eye, saw undiscovered countries, who, after wandering footsore through Europe at last obtained the means whereby he committed himself to the ocean and was rewarded by the discovery of a new world, where new nations have sprung up that rival in glory those of the old. This discoverer of America, of course, as every school boy knows, was— was— was— (looking at his notes) Christopher Columbus. (Laughter.) And, gentlemen, there was yet another, not upon the bloody fields of battle, not upon the ocean's wave, but walking by the blue sea of Galilee and treading the shores of ancient Palestine, and who, for the love of humanity had quit the courts of heaven to come that the sinful might

be redeemed, and who gave his life upon the cross. Gentlemen, in reverence I pronounce the name of— the name of— the name of (looking at his notes) the name of Jesus Christ." (Laughter.)

When they came to me and said I must respond to this toast, I said, "I am no ladies' man" (and that was true in some sense and not true in others) "and I don't know what to say. I have never thought about a speech of this kind." Then they said, "Why, it don't make any difference about that. It doesn't require any thought. You are the last one on the list, and by the time you are reached the sea breeze will have had such effect upon this crowd that they won't know whether you are saying anything worthy of thought or not." (Laughter.)

Now, I would not mind, at this late hour, when you have been subjected to the influence of the sea breeze for several hours, responding to a toast on some of these other subjects, about which, of course, I could have talked more fluently and eloquently than these gentlemen who have preceded me. If you had given me the subject about the Supreme Court, I would have felt perfectly safe, because that Bench has been filled by men, the mention of whose name is itself eloquence, and simply to have pointed to our present venerable Chief Justice who sits with us at this banquet board, would have elicited applause. Then if you had given me this subject you gave Judge Reese, "The Court of Civil Appeals," I could have made you a sure enough speech about that. I could have told you of the greatness and the grandeur of that court and of the men who have occupied it, and of the men who now occupy it—one of whom I am which. (Laughter.) You know they have fitted for this court a place of honor and retirement, that we call the Supreme Court. Judge Brown used to be a member of the Court of Civil Appeals, and that is the reason that he is such an eminent judge of the Supreme Court, and Judge Williams, one of the men of whom Judge Brown spoke, used to be a member of this court. Not only are the members of the Court of Civil Appeals men of learning and ability, but they are patriotic and self-sacrificing. There are two of them now who are willing to quit this honorable position and go upon the Supreme Court. (Laughter.)

But they did not give me that subject. They gave me the subject of "Woman," and our toastmaster says that it is the subject in which we are all interested. And so we are. Woman! Shall I indulge in that bit of sentiment that has been so oft repeated?

"O Woman, in our hours of ease,  
Uncertain, coy, and hard to please,  
When pain and anguish wring the brow,  
A ministering angel thou."

The latter part of it is true. She is a ministering angel. But the first part is a slander upon womanhood. She is not uncertain, except as to whom she will marry, and the average husband is proof that she is not hard to please, in that respect at least, or shall I quote that other verse, that is more true, from Scotland's bard, when he said:

"Auld Nature swears, the lovely dears  
Her noblest work she classes O;  
Her prentice han' she try'd on man,  
An' then she made the lasses O."

However much the ordinary man is prone to agree with Ingersoll that the Lord has made many mistakes in His work of creation, I have never seen one who was so presumptuous as to say that He had made any mistake in the creation of woman. (Applause.) Woman is worthy of all the sentiment that has been lavished upon her by poets, but she is more than all that. Woman is mentally and morally, the equal of man, and in some respects, by nature and culture, she is his superior. (Applause.) Not only as the priestess of the home, and the guardian of our children, not only in the fact that by virtue of her motherhood and her supremacy in the home, she has the shaping of the character and the destiny of men, but in other respects she has shown herself the equal of man. In that love of country, which we call patriotism, which makes men serve their country for the welfare of others, whether upon the Bench, in the legislative halls, or to face death upon the battlefield, when opportunity has offered the test, woman has not been found inferior to man. Glance back over the pages of history. Read of those times when the women of Carthage gave their hair as bowstrings for the defense of their country, and in that struggle when the Romans encamped around about the Holy City, the defense which has no parallel in the annals of history, and we find that it was the daughters of Jerusalem who buckled the swords on the warriors of Zion, and said to them, "Go upon the walls and die for your country and the city of God." (Applause.) We need not go, however, to ancient history for examples of devotion to country's cause. We need go no farther back than the late terrible struggle between the North and the South in this country. The women of the South were as patriotic as the sons of the South who gave their lives upon the battlefield, yea, all things considered, more so. (Applause.) The soldier who joined his company and his regiment went forth to the sound of the drum and the bugle, with the martial strains to urge him on, realizing that though he might never return, glory awaited him upon the battlefield, for no more glorious end of life could come to man than to die for his country upon the field of battle. But how was it with the wife, with the daughter, with the sister, who clasped the husband, the father, and the brother, and bade him go to the defense of his country. No martial strain cheered her weary steps as she turned back to that lonely home. To her were left the sorrow and the struggles that require more of courage than to march on the battlefield. If the soldier fell in battle, he fell on glory's field, but when his comrades covered him in the trench they could not cover the open grave in the hearts of the loved ones at home.

Women today are coming into their own. Among savage nations woman is a beast of burden and a chattel slave, but as civilization



has advanced she has been recognized as a being with mental and moral faculties equal to those of man, as a soul, human, divine. There are those today who regret the changing scenes and events that are before us. You will hear them say, "Why a woman is all right in her sphere." What is her sphere? Her sphere is as broad as the world and as endless as eternity. She is coming into her own. She is helping man to shape the destinies of nations; she is helping by raising a loftier standard in government and in politics. I do not believe in woman becoming unwomanly, but I believe we should recognize the fact that woman has an intellect and a soul, and that she is capable, in all the walks of life, of influencing the destiny of the people and of the country for good.

I reckon it would have been a good thing if I should have had notes, because I would have been through a good while ago. (Laughter.) I think I will quit right now by asking you to drink to "Woman, the Coming Man." (Laughter and applause.)

#### THE PRESIDENT.

*Gentlemen of the Bar Association:* As the last final toast, as President of the Association, I would propose the health and happiness of the Galveston Bar, and of our distinguished toastmaster (applause), whose elegant diction and delightful humor have added so much pleasure to this gathering. Will you drink with me? (Applause.)

# ROLL OF MEMBERS

## With Residence and YEAR OF ENROLLMENT

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1912—Adams, J. T.,	Orange
1883—Allen, W. H.,	Dallas
1908—Allen, W. T.,	Henrietta
1896—Allen, W. P.,	Austin
1910—Amerman, A. E.,	Houston
1911—Anderson, J. H.,	Marlin
1907—Anderson, Geo. D.,	Beaumont
1897—Anderson, Wm. W.,	Houston
1910—Anderson, W. A.,	San Angelo
1900—Andrews, Frank,	Houston
1906—Armistead, W. T.,	Jefferson
1900—Armstrong, W. T.,	Galveston
1910—Arnold, G. S.,	Bronte
1904—Ashe, Chas. E.,	Houston
1911—Atkinson, J. B.,	Cameron
1910—Atwell, Wm. H.,	Dallas
1911—Aubrey, Llewellyn,	Waco
1912—Austin, Wm. E.,	Bay City
1884—Aubrey, Wm.,	San Antonio
1882—Autry, Jas. L.,	Houston
1910—Autry, S. C.,	San Angelo
1891—Avery, J. M.,	Dallas
1912—Aynesworth, Jos. H.,	Childress
1904—Bailey, Edw. H.,	Houston
1910—Bailey, W. S.,	Houston
1911—Baker, E. B.,	Waco
1882—Baker, Jas. A.,	Houston
1910—Baker, J. K.,	Coleman
1902—Baker, Rhodes S.,	Dallas
1908—Baker, Waller S.,	Waco
1898—Baldwin, J. C.,	Houston
1905—Baldwin, B. J.,	Paris
1884—Ball, Robt. L.,	San Antonio
1894—Ball, Thos. H.,	Houston
1906—Ballew, W. W.,	Corsicana

1912—Barkley, K. C.,	Houston
1907—Barry, H. P.,	Beaumont
1902—Bartlett, F. W.,	Dallas
1909—Bartholomew, W. T.,	San Angelo
1909—Barton, A. M.,	Huntsville
1906—Barwise, T. H., Jr.,	Fort Worth
1912—Bassett, W. H.,	Brenham
1895—Batts, R. L.,	Austin
1903—Bates, Wharton,	Houston
1910—Baten, Thos. J.,	Beaumont
1905—Bastell, Chas.,	Sherman
1908—Baughn, M. H.,	Mineral Wells
1886—Beall, T. J.,	El Paso
1902—Beaty, A. L.,	Houston
1904—Beaty, Jno. T.,	Jasper
1897—Bell, A. J.,	San Antonio
1905—Bell, C. K.,	Fort Worth
1910—Bell, Geo. A.,	Mexia
1906—Benfield, J. H.,	Jefferson
1903—Berry, W. C.,	San Antonio
1911—Binkley, Thos. G.,	Temple
1907—Bisland, J. B.,	Orange
1910—Blalock, W. C., Jr.,	San Angelo
1910—Blanks, W. C.,	San Angelo
1910—Blanton, Thos. L.,	Abilene
1905—Bliss, Don A.,	San Antonio
1907—Blount, S. W.,	Nacogdoches
1902—Bookhout, John,	Dallas
1905—Bondies, Harry R.,	Sweetwater
1904—Boone, Gordon,	Navasota
1904—Borden, Henry L.,	Houston
1912—Botts, Thos. B.,	Brenham
1904—Botts, Thos. H.,	Houston
1912—Bowers, Richard S.,	Caldwell
1912—Bowers, Wm. O.,	Giddings
1911—Bowman, L. L.,	Greenville
1908—Boyle, R. J.,	San Antonio
1903—Bradley, C. S.,	Groesbeck
1905—Bradley, Tom C.,	Fort Worth
1909—Brady, John W.,	Austin
1912—Branch, E. T.,	Houston
1908—Bratton, R. E.,	Fort Worth
1912—Briggs, Clay S.,	Galveston
1908—Bromberg, Henri L.,	Dallas
1904—Brooks, M. M.,	Dallas
1905—Brooks, S. J.,	San Antonio
1902—Browder, Edw. M.,	Dallas

1910—Brown, Lindsey M.,	Fort Worth
1882—Brown, T. J.,	Austin
1910—Brown, R. T.,	Henderson
1910—Brown, R. Wilbur,	San Angelo
1896—Bryan, Beauregard,	El Paso
1891—Bryan, Lewis R.,	Houston
1908—Bryan, Morgan,	Fort Worth
1907—Bruce, E. L.,	Orange
1905—Burford, A. L.,	Texarkana
1896—Burgess, R. F.,	El Paso
1910—Burgess, A. R.,	San Angelo
1903—Burgess, Wm. H.,	El Paso
1912—Burgess, Geo. T.,	Dallas
1903—Burney, R. H.,	Kerrville
1896—Burns, W. T.,	Houston
1912—Butler, C. T.,	Beaumont
1909—Buckley, W. F.,	Austin
1907—Calhoun, A. L.,	Beaumont
1910—Campbell, Joab,	Eldorado
1902—Campbell, T. M.,	Palestine
1898—Cantey, S. B.,	Fort Worth
1908—Capps, Wm.,	Fort Worth
1895—Carlton, L. A.,	Houston
1903—Carter, C. L.,	Houston
1911—Carter, Geo. H.,	Marlin
1894—Carter, H. C.,	San Antonio
1909—Cartledge, E.,	Austin
1912—Carpenter, H. L.,	Greenville
1905—Carpenter, Lewis T.,	Dallas
1912—Carpenter, W. C.,	Bay City
1894—Carswell, R. E.,	Decatur
1909—Cave, J. B.,	Austin
1908—Cavin, E. D.,	Galveston
1906—Chambers, C. M.,	San Antonio
1905—Chambers, E. S.,	Clarksville
1908—Chambers, J. M.,	Fort Worth
1898—Childs, J. D.,	San Antonio
1886—Clark, Wm. H.,	Dallas
1896—Clark, Jno. H.,	San Antonio
1911—Cline, H. A.,	Wharton
1906—Clough, G. J.,	Galveston
1894—Cochran, T. B.,	Austin
1911—Cocke, J. Walter,	Waco
1896—Cockrell, Joe E.,	Dallas
1912—Coke, Alex S.,	Dallas
1886—Coke, Henry C.,	Dallas
1904—Coldwell, W. M.,	El Paso

1910—Collins, Alex, .....	San Angelo
1907—Collins, V. A., .....	Beaumont
1908—Collins, Walter, .....	Hillsboro
1907—Colgin, E. B., .....	Houston
1910—Connerly, Fred T., .....	Austin
1898—Connerly, R. H., .....	Austin
1905—Connor, E. S., .....	Paris
1907—Conley, Jno. M., .....	Beaumont
1907—Cooper, S. B., .....	New York
1907—Cooper, S. B., Jr., .....	Beaumont
1907—Cope, G. T., .....	Fort Worth
1910—Cornell, James, .....	Sonora
1909—Cox, John R., .....	Austin
1911—Cox, M. G., .....	Cameron
1902—Crane, M. M., .....	Dallas
1910—Crane, R. C., .....	Sweetwater
1902—Crawford, M. L., Jr., .....	Dallas
1882—Crawford, W. L., .....	Dallas
1902—Crawford, Walter J., .....	Beaumont
1893—Crisp, J. C., .....	Beeville
1903—Crook, W. M., .....	Beaumont
1882—Culberson, Chas. A., .....	Dallas
1908—Cummings, B. Y., .....	Hillsboro
1912—Cunningham, B. J., .....	Galveston
1907—Dabney, J. F., .....	Liberty
1910—Dabney, Lewis M., .....	Dallas
1905—Dabney, S. B., .....	Houston
1910—Dalton, C. T., .....	San Angelo
1912—Daniel, R. L., .....	Victoria
1904—Dannenbaum, H. J., .....	Houston
1912—Darrouzet, J. L., .....	Galveston
1912—Darst, Harris P., .....	Richmond
1908—Dashiell, A. H., .....	Terrell
1909—Dannelley, J. L., .....	Laredo
1907—Davenport, J. R., .....	Beaumont
1910—Davidson, C. E., .....	Ozona
1882—Davidson, R. V., .....	Dallas
1912—Davidson, W. L., .....	Austin
1911—Davis, John, .....	Dallas
1911—Davis, John W., .....	Waco
1903—Davis, M. W., .....	San Antonio
1905—Dean, A. R., .....	Sherman
1912—Dedmon, Perry G., .....	Fort Worth
1912—Dean, W. L., .....	Huntsville
1894—Denman, L. G., .....	San Antonio
1889—Dibrell, Jos. B., .....	Austin
1910—Dibrell, Jos. B., Jr., .....	Coleman

1907—Dies, W. W., .....	Kountze
1895—Dillard, F. C., .....	Chicago, Ill.
1905—Dillard, F. B., .....	Tulsa, Okla.
1911—Dilworth, Tom G., .....	Waco
1911—Dilworth, T. M., .....	Waco
1902—Dinsmore, James, .....	Greenville
1910—Dinsmore, John P., .....	Greenville
1905—Dohoney, A. P., .....	Paris
1909—Doom, D. H., .....	Austin
1906—Dorough, R. P., .....	Texarkana
1907—Dowlin, P. A., .....	Beaumont
1907—Dougherty, G. P., .....	Beaumont
1910—Dougherty, J. R., .....	Beeville
1910—Dubois, C. E., .....	San Angelo
1896—Duff, F. J., .....	Beaumont
1901—Duff, R. C., .....	Beaumont
1907—Duffy, M. S., .....	Beaumont
1910—Dumas, James P., .....	San Angelo
1896—Duncan, Jno. M., .....	Houston
1897—Duncan, Jno. T., .....	La Grange
1898—Dyer, Jno. L., .....	El Paso
1903—Eagle, Joe H., .....	Houston
1910—Early, W. U., .....	Brownwood
1907—Easterling, E. E., .....	Beaumont
1902—Eberhart, F. S., .....	Mineral Wells
1896—Edwards, Peyton F., .....	El Paso
1910—Eidson, A. R., .....	Hamilton
1903—Eppstein, L. B., .....	New York
1905—Estes, W. L., .....	Texarkana
1896—Evans, H. G., .....	Bonham
1905—Evans, W. A., .....	Bonham
1911—Ewing, E. M., .....	Waco
1899—Ewing, Presley K., .....	Houston
1904—Feagin, J. C., .....	Livingston
1909—Feuille, Frank .....	Austin
1906—Figures, W. B., .....	Atlanta
1903—Fisher, Lewis, .....	Galveston
1907—Fleming, J. V., .....	Beaumont
1908—Ford, Frank J., .....	Decatur
1882—Ford, T. W., .....	Houston
1898—Ford, T. C., .....	Houston
1911—Foster, W. N., .....	Conroe
1893—Foster, Arthur C., .....	Rule
1908—Francis, W. H., .....	Fort Worth
1908—Frank, D. A., .....	Dallas
1912—Franklin, R. W., .....	Houston
1884—Franklin, Thos. H., .....	San Antonio

1911—Frazier, A. M., .....	Hillsboro
1905—Freeman, C. J., .....	El Paso
1905—Gafford, Ben F., .....	Sherman
1912—Gaines, John W., .....	Bay City
1897—Gaines, R. R., .....	Austin
1911—Gallagher, J. N., .....	Waco
1905—Galloway, C. L., .....	El Paso
1911—Gammon, J. Lee, .....	Waxahachie
1906—Garland, J. E., .....	Lamesa
1912—Garrett, D. E., .....	Houston
1912—Garrett, H. L., .....	Galveston
1910—Garrett, H. S., .....	Sweetwater
1907—Garrison, J. T., .....	Nacogdoches
1911—Garth, D. T., .....	Teague
1894—Garwood, H. M., .....	Houston
1911—Gary, Hampson, .....	Tyler
1899—Gill, W. H., .....	Houston
1897—Glass, Hiram, .....	Austin
1907—Glasscock, D. W., .....	Beaumont
1903—Goeth, C. A., .....	San Antonio
1907—Goodrich, W. F., .....	Hemphill
1910—Goodwin, John W., .....	Brownwood
1907—Gordon, S. E., .....	Beaumont
1906—Gordon, W. D., .....	Beaumont
1902—Gossett, M. H., .....	Dallas
1910—Graham, N. W., .....	Ozona
1909—Graves, Ireland, .....	Austin
1907—Graves, G. W., .....	Houston
1907—Gregory, T. W., .....	Austin
1902—Greenwood, C. F., .....	Dallas
1912—Green, John E., Jr., .....	Houston
1907—Greer, Geo. C., .....	Beaumont
1898—Greer, R. A., .....	Beaumont
1904—Greiner, J. G., .....	Del Rio
1910—Grogan, W. L., .....	Abilene
1911—Gross, Abe, .....	Waco
1882—Gresham, Walter, .....	Galveston
1882—Grimes, S. F., .....	Cuero
1910—Guion, John I., .....	Ballinger
1905—Haizlip, J. D., .....	Sherman
1905—Hale, Owen P., .....	Paris
1904—Hamblen, E. P., .....	Houston
1904—Hamblen, Otis K., .....	Houston
1910—Hamilton, Edgar S., .....	San Angelo
1908—Hanger, W. A., .....	Fort Worth
1908—Harding, W. L., .....	Waxahachie
1907—Hardy, D. H., .....	Houston

1910—Harp, D. Leon, .....	San Angelo
1911—Harper, A. J., .....	Austin
1908—Harper, Jas. R., .....	El Paso
1912—Harrell, Morris B., .....	Greenville
1910—Harris, C. O., .....	Ballinger
1892—Harris, Edw. F., .....	Galveston
1891—Harris, Jno. Chas., .....	Houston
1904—Harris, R. C., .....	Beaumont
1898—Harris, Theodore, .....	San Antonio
1910—Harrison, G. N., .....	Brownwood
1907—Harrison, Jas. A., .....	Beaumont
1908—Harrison, Robt., .....	Fort Worth
1908—Hart, H. G., .....	Hillsboro
1909—Hart, Jas. H., .....	Austin
1906—Hart, R. D., .....	Texarkana
1909—Hart, W. D., .....	Austin
1882—Harwood, T. F., .....	Gonzales
1905—Hassell, J. W., .....	Sherman
1897—Hawkins, E. A., Jr., .....	Los Angeles, Cal.
1909—Hawkins, Wm. E., .....	Brownsville
1905—Hay, W. L., .....	Sherman
1904—Head, Hayden W., .....	Sherman
1882—Hefley, W. T., .....	Cameron
1907—Hefner, R. A., .....	Beaumont
1906—Henderson, J. M., .....	Daingerfield
1882—Henderson, T. S., .....	Cameron
1903—Hicks, Marshall, .....	San Antonio
1898—Hicks, Yale, .....	San Antonio
1903—Hildebrand, Ira P., .....	Austin
1890—Hill, James E., .....	Livingston
1894—Hill, James E., Jr., .....	Livingston
1910—Hill, J. P., .....	San Angelo
1906—Hill, J. W., .....	San Angelo
1903—Hill, Sam'l F., .....	Livingston
1912—Holbrook, T. J., .....	Galveston
1912—Holiday, Robt. L., .....	El Paso
1902—Holland, W. M., .....	Dallas
1902—Holloway, Thos. T., .....	Dallas
1910—Holman, Wm. Shields, .....	Bay City
1905—Holt, Jesse F., .....	Sherman
1908—Hord, H. C., .....	Sweetwater
1909—Hodges, Wm., .....	Texarkana
1911—Hooser, E. H., .....	Gatesville
1882—Houston, A. W., .....	San Antonio
1882—Houston, Reagan, .....	San Antonio
1910—Howard, Jno. B., .....	Midland
1907—Howth, C. W., .....	Beaumont



1897—Huff, S. P.,	Vernon
1910—Hughes, H. C.,	Sweetwater
1896—Hughes, W. E.,	Denver
1882—Hume, F. Chas.,	Houston
1890—Hume, F. Chas., Jr.,	Houston
1911—Humphrey, Leslie,	Henrietta
1906—Humphrey, T. E.,	Huntsville
1908—Hunt, G. D.,	Dallas
1898—Hunt, W. S.,	Houston
1908—Hunter, Ray,	Fort Worth
1906—Hurley, J. A.,	Texarkana
1911—Hutcheson, J. C., Jr.,	Houston
1911—Hutchings, T. C.,	Mount Pleasant
1912—Huvelle, L. C.,	Dallas
1903—Ingram, R. P.,	San Antonio
1909—Isaacs, S. J.,	Midland
1910—Jackson, Henry E.,	San Angelo
1911—James, T. R., Jr.,	Fort Worth
1910—Jenkins, C. H.,	Austin
1897—Jester, C. L.,	Corsicana
1908—Johnson, C. W.,	Graham
1895—Johnson, Marsene,	Galveston
1909—Johnson, T. S.,	Austin
1907—John, Robt. A.,	Houston
1905—Jones, B. L.,	Sherman
1898—Jones, F. C.,	Houston
1910—Jones, Joseph,	Del Rio
1902—Jones, J. T.,	Greenville
1902—Jones, Wm. M.,	Dallas
1906—Jones, S. P.,	Marshall
1900—Jordan, H. P.,	Waco
1912—Kampmann, I. S.,	San Antonio
1908—Kay, John C.,	Graham
1906—Keeling, W. A.,	Groesbeck
1903—Keller, C. A.,	San Antonio
1909—Keller, Victor,	San Antonio
1896—Kelley, G. G.,	Wharton
1907—Kelly, W. F.,	Galveston
1910—Kemp, Maury	El Paso
1911—Kendall, B. G.,	Waco
1906—Key, Scott W.,	Haskell
1894—Key, W. M.,	Austin
1912—Kincaid, John W.,	Austin
1912—King, Geo. S.,	Nacogdoches
1910—King, Harry Tom,	Abilene
1905—King, John J.,	Texarkana
1906—Kirby, A. H.,	Abilene

1912—Kirlicks, John A.,	Houston
1910—Kirk, W. W.,	Sweetwater
1884—Kittrell, Norman G.,	Houston
1904—Kittrell, Norman G., Jr.,	Houston
1882—Kleberg, M. E.,	Galveston
1882—Kleberg, Rudolph,	Austin
1903—Kleiber, John I.,	Brownsville
1894—Knight, R. E. L.,	Dallas
1905—Kone, J. S.,	Denison
1900—Kopperl, M. O.,	Galveston
1904—Kreuger, C. G.,	Bellville
1882—Lane, Jonathan,	Houston
1910—Lanham, Fritz G.,	Weatherford
1908—Lassiter, N. H.,	Fort Worth
1905—Lawrence, J. S.,	Sherman
1906—Leary, D. T.,	Texarkana
1908—Ledgerwood, H. O.,	Fort Worth
1910—Lee, Brown F.,	San Angelo
1894—Lee, Chas. K.,	Fort Worth
1899—Lee, Tom J.,	Galveston
1904—Lenert, Geo. E.,	La Grange
1903—Leonard, H. B.,	San Antonio
1906—Levy, R. B.,	Longview
1911—Lewelleyn, Nat. J.,	Marlin
1895—Lewis, Perry J.,	San Antonio
1912—Lewis, Richard R.,	Bay City
1902—Lewis, Yancey,	Dallas
1911—Lindsey, S. A.,	Tyler
1909—Lindsey, N. L.,	Dallas
1897—Lipscomb, A. D.,	Beaumont
1912—Lipscomb, A. G.,	Hempstead
1911—Lipscomb, R. T.,	Bonham
1906—Lightfoot, J. P.,	Austin
1907—Little, Jno. L.,	Kountze
1902—Lively, H. F.,	Dallas
1908—Locke, Eugene P.,	Dallas
1902—Locke, Maurice E.,	Dallas
1904—Lockett, J. W.,	Houston
1907—Lockett, J. S., Jr.,	Fort Worth
1896—Lockhart, Wm. B.,	Galveston
1908—Lomax, Page T.,	Fort Worth
1907—Long, S. B. M.,	Paris
1907—Lord, C. A.,	Beaumont
1904—Louis, B. F.,	Houston
1902—Love, Thomas B.,	Dallas
1882—Lovejoy, John,	Houston
1907—Lovenberg, I., Jr.,	Galveston

1899—Lovett, R. S.,	New York
1907—Lowry, M. W.	Beaumont
1909—McCartney, C. L.,	Brownwood
1911—McClellan, J. J.,	Corsicana
1906—McClendon, J. W.,	Austin
1891—McCormick, A. P.,	Dallas
1911—McCullough, T. L.,	Waco
1901—McDonald, D. D.,	Galveston
1907—McDowell, E. A.,	Beaumont
1897—McEachin, J. S.,	Austin
1905—McGrady, J. G.,	El Paso
1905—McInnis, V. E.,	Sherman
1912—McKamy, W. C.,	Dallas
1908—McKenzie, J. F.,	Pecos
1908—McKnight, A. H.,	Dallas
1891—McKie, W. J.,	Corsicana
1907—McLaurin, J. F.,	Brookland
1900—McLaurin, Lauch,	Austin
1908—McLean, E. C.,	Sherman
1886—McLean, W. P.,	Fort Worth
1908—McLean, W. P., Jr.,	Fort Worth
1910—McMahan, B. M.,	Greenville
1897—McMahon, J. B.,	Hamblin
1912—McMeans, S. A.,	Galveston
1910—McMillan, R. J.,	Kingsville
1885—McNeal, Thos.,	Lockhart
1902—McRae, Chas. C.,	Houston
1912—Macgill, Chas. P.,	Galveston
1907—Mackey, Jno. W.,	Beaumont
1906—Mahaffey, J. G.,	Texarkana
1904—Malevinsky, M. L.,	New York
1911—Mann, E. M.,	Mart
1882—Masterson, B. F.,	Galveston
1904—Masterson, A. E.,	Angleton
1904—Masterson, Harris,	Houston
1908—Mathis, Jno. M.,	Brenham
1907—Mathis, L. H.,	Wichita Falls
1905—Mathis, W. J.,	Denison
1908—Matthael, W. O.,	Bellville
1903—Maury, R. G.,	Houston
1882—Maxey, T. S.,	Austin
1911—Maxwell, F. M.,	Waco
1905—Mayfield, Allison,	Austin
1910—Mays, Milton,	San Angelo
1907—Meador, R. T.,	Dallas
1908—Milam, R. F.,	Fort Worth
1908—Michaelson, J. E.,	Lawton, Okla

1910—Miller, J. A. B.,	Coleman
1897—Miller, Geo. E.,	Fort Worth
1886—Miller, T. S.,	Dallas
1907—Miller, W. E.,	Beaumont
1912—Mills, Ballinger,	Galveston
1882—Minor, E. D.,	Beaumont
1912—Minor, F. D. Jr.,	Beaumont
1910—Montgomery, L. L.,	San Angelo
1912—Monteith, W. E.,	Houston
1889—Montrose, T. D.,	Greenville
1896—Moody, L. B.,	Houston
1907—Moore, B. E.,	Beaumont
1902—Moroney, W. J.,	Dallas
1899—Morrison, W. A.,	Cameron
1911—Morrow, Tarlton,	Hillsboro
1899—Morrow, W. C.,	Hillsboro
1899—Moseley, A. G.,	St. Louis, Mo.
1910—Moseley, H. L.,	Weatherford
1912—Moss, Edwards H.,	La Grange
1911—Munroe, Richard I.,	Waco
1912—Munson, J. W.,	Angleton
1910—Murray, Joe,	San Antonio
1902—Muse, J. C.,	Dallas
1907—Nall, E. L.,	Beaumont
1907—Nall, W. H.,	Kountze
1906—Napier, W. P.,	San Antonio
1893—Neal, Geo. D.,	Navasota
1882—Neblett, R. S.,	Corsicana
1903—Neethe, Jno.,	Galveston
1910—Neill, Jas. J.,	San Angelo
1903—Neill, Robt. T.,	El Paso
1899—Nelms, Hayne,	Groveton
1891—Newman, F. M.,	Brady
1908—Newsom, Jno. A.,	Buffalo
1895—Nichols, J. F.,	Greenville
1904—Niday, Jas. E.,	Houston
1908—Nolan, Jas. E.,	Fort Worth
1898—Norton, J. R.,	San Antonio
1894—Nunn, D. A., Jr.,	Crockett
1883—O'Brien, Geo. W.,	New York
1911—Odell, W. M.,	Cleburne
1907—O'Fiel, J. J.,	Beaumont
1910—Ogden, Ira C.,	San Antonio
1906—O'Neal, Howard F.,	Atlanta
1898—Onion, J. F.,	San Antonio
1908—Paddock, W. B.,	Fort Worth
1886—Padelford, S. C.,	Cleburne

1905—Park, A. P.,	Paris
1898—Parker, Edwin B.,	Houston
1896—Parker, John W.,	Houston
1907—Parker, O. S.,	El Paso
1899—Parr, J. K.,	Hillsboro
1911—Parrish, Lucian W.,	Henrietta
1902—Patteson, James,	Cooper
1908—Pearman, C. R.,	Gainesville
1903—Pearson, J. M.,	McKinney
1897—Peareson, D. R.,	Richmond
1909—Pedigo, E. R.,	Austin
1898—Peeler, Jno. L.,	Austin
1904—Pendarvis, G. H.,	Houston
1886—Perkins, E. B.,	Dallas
1907—Perkins, J. L.,	Rusk
1889—Perryman, Sam R.,	Houston
1904—Phelps, Ed S.,	Houston
1902—Phillips, Nelson,	Austin
1907—Pickett, E. B., Jr.,	Liberty
1904—Pierson, Wm.,	Greenville
1908—Pierson, W. M.,	Dallas
1912—Pleasants, Aaron W.,	Houston
1900—Pleasants, R. A.,	Galveston
1906—Pollard, Claude,	Kingsville
1902—Potter, C. C.,	Gainesville
1909—Potts, C. S.,	Austin
1906—Powell, Ben H.,	Huntsville
1911—Prendergast, A. C.,	Austin
1908—Prewitt, W. C.,	Fort Worth
1891—Proctor, F. C.,	Beaumont
1882—Rainey, Anson,	Dallas
1910—Ramsey, W. F.,	Austin
1905—Randell, C. B.,	Sherman
1883—Reese, T. S.,	Galveston
1908—Rhome, R. J.,	Fort Worth
1898—Rice, B. H.,	Austin
1910—Rice, Robt. H.,	Winters
1910—Robards, Chas. M.,	Kingsville
1911—Roberts, J. C.,	Dallas
1906—Robertson, Jno. C.,	Dallas
1907—Robertson, H. G.,	Beaumont
1896—Robertson, Jas. M.,	Meridian
1904—Robinson, C. W.,	Houston
1906—Robison, S. I.,	Daingerfield
1906—Rodgers, R. W.,	Texarkana
1908—Ross, Thos. D.,	Fort Worth
1908—Ross, Shapley P.,	Waco

1910—Rowe, S. C.,	Menardville
1904—Rowe, T. C.,	Houston
1908—Rowland, R. M.,	Fort Worth
1912—Royston, Mart H.,	Galveston
1909—Rector, J. Bouldin,	Austin
1882—Rector, N. A.,	Austin
1903—Ryan, Jos.,	San Antonio
1912—Ryan, J. B.,	San Antonio
1910—Sanders, J. M.,	Center
1911—Saner, Jno. C.,	Dallas
1900—Saner, R. E. L.,	Dallas
1908—Sanford, A. D.,	Waco
1908—Sawyer, W. R.,	Fort Worth
1882—Sayers, Jos. D.,	Austin
1910—Sayle, W. E.,	Ballinger
1910—Sayles, John,	Abilene
1910—Scott, S. W.,	Haskell
1908—Scott, W. B.,	Fort Worth
1904—Scott, Walter H.,	El Paso
1908—Scott, J. C.,	Fort Worth
1907—Scurlock, Marvin,	Beaumont
1912—Searcy, Seth S.,	San Antonio
1882—Searcy, W. W.,	Brenham
1903—Seelingson, A. W.,	San Antonio
1898—Sehorn, John,	San Antonio
1906—Sexton, R. A.,	Marshall
1911—Sharp, John H.,	Ennis
1909—Shelley, G. E.,	Austin
1882—Sheperd, Seth,	Washington, D. C.
1899—Shepherd, Jas. L.,	Colorado
1905—Shropshire, J. E.,	Brady
1910—Silliman, W. B.,	Eldorado
1882—Simkins, W. S.,	Austin
1900—Simmons, D. E.,	Houston
1908—Simon, U. M.,	Fort Worth
1907—Skinner, S. P.,	Waxahachie
1909—Shurtleff, V. L.,	Hillsboro
1908—Slay, W. H.,	Fort Worth
1911—Sleeper, W. M.,	Waco
1906—Smelser, S. H.,	Texarkana
1910—Smith, E. P.,	Austin
1910—Smith, M. C.,	Ballinger
1910—Smith, Royal G.,	Colorado
1902—Smith, W. J. J.,	Dallas
1905—Smith, Cecil H.,	Sherman
1907—Smith, Stuart R.,	Beaumont
1907—Smithdeal, C. M.,	Hillsboro

1908—Snodgrass, F. L.,	Coleman
1905—Spearman, R. F.,	Greenville
1905—Sonfield, Leon,	Beaumont
1909—Spell, W. E.,	Hillsboro
1904—Speer, Ocle,	Fort Worth
1895—Spence, Jos., Jr.,	San Angelo
1886—Spence, Wendell,	Dallas
1906—Spivey, E. Newt.,	Atlanta
1906—Spivey, Jno. W.,	Marlin
1894—Spoonts, M. A.,	Fort Worth
1905—Spoonts, Marshall,	Fort Worth
1909—Stephens, I. W.,	Fort Worth
1894—Stewart, Maco,	Galveston
1896—Stewart, Jno. S.,	Houston
1906—Stinchcomb, T. B.,	Longview
1910—Stone, B. B.,	Ballinger
1912—Stone, Hugh L., Jr.,	Houston
1911—Stratton, S. E.,	Waco
1911—Street, E. C.,	Waco
1882—Street, R. G.,	Galveston
1897—Streetman, Sam,	Houston
1911—Stribling, O. L.,	Waco
1908—Stuart, Harry L.,	Gainesville
1900—Stubbs, Chas. J.,	Galveston
1882—Stubbs, Jas. B.,	Galveston
1905—Suggs, J. T.,	Denison
1903—Sullivan, J. C.,	San Antonio
1910—Swafford, Whitten,	Anson
1906—Talbot, J. M.,	Dallas
1909—Talichet, J. H.,	Houston
1882—Taliaferro, Sinclair,	Houston
1882—Tarlton, R. D.,	Austin
1911—Taylor, J. W.,	Waco
1910—Taylor, S. E.,	San Angelo
1907—Taub, Otto,	Houston
1907—Teagle, C. A.,	Houston
1907—Templeton, Howard,	San Antonio
1906—Terrell, J. M.,	Daingerfield
1911—Terrell, John L.,	Austin
1882—Terrell, J. O.,	San Antonio
1882—Terrell, A. W.,	Austin
1882—Terry, J. W.,	Galveston
1910—Thomas, J. A.,	San Angelo
1906—Thomas, W. S.,	Texarkana
1909—Thomason, R. E.,	Gainesville
1905—Thompson, Geo.,	Fort Worth
1902—Thompson, J. W.,	Dallas

1897—Thompson, Wm.,	Dallas
1910—Thomson, J. T.,	San Angelo
1889—Tod, John G.,	Houston
1882—Todd, Chas. S.,	Texarkana
1907—Todd, Oliver J.,	Beaumont
1907—Townes, E. E.,	Beaumont
1896—Townes, John C.,	Austin
1908—Townsend, M. W.,	Dallas
1909—Treaccar, Chas. J.,	Galveston
1905—Turner, P. A.,	Texarkana
1898—Turney, W. W.,	El Paso
1909—Umstead, Chas. H.,	Texarkana
1905—Upthegrove, Daniel,	Dallas
1910—Upton, Lee,	San Angelo
1908—Vaughan, R. M.,	Hillsboro
1908—Von Carlowitz, C.,	Fort Worth
1909—Von Rosenberg, Fred C.,	Austin
1905—Vinson, Wm. A.,	Houston
1910—Wade, J. B.,	Ballinger
1908—Wade, N. J.,	Fort Worth
1882—Walker, Jno. C.,	Galveston
1910—Wallace, Geo. E.,	El Paso
1906—Wagstaff, J. M.,	Abilene
1909—Walne, Walter H.,	Houston
1907—Walter, C. K.,	Gonzales
1911—Ward, Pierce B.,	Cleburne
1903—Ward, R. H.,	San Antonio
1910—Wardlaw, S. J.,	Sonora
1896—Wash, F. H.,	San Antonio
1912—Watkin, Robert N.,	Dallas
1902—Watkins, A. B.,	Athens
1895—Watkins, Edgar,	Atlanta, Ga.
1911—Watson, John,	Cameron
1910—Wayman, Jas. W.,	Brownwood
1889—Wear, W. C.,	Hillsboro
1910—Weatherred, W. Marcus,	Coleman
1911—Weaver, W. G.,	Waco
1911—Webb, J. R.,	Waco
1905—Webb, G. P.,	Sherman
1912—Weisberg, Alex. F.,	Dallas
1911—West, Frank T.,	Waco
1910—West, Thos. F.,	Fort Worth
1910—Wharton, C. R.,	Houston
1911—Wharton, Earl,	Houston
1907—Wheat, D. P.,	Beaumont
1906—Wheeler, Jno. T.,	Galveston
1907—Whitaker, H. M.,	Beaumont



1908—Wilcox, F. E.,	McKinney
1904—Wilkerson, J. D.,	Beaumont
1894—Wilkinson, A. E.,	Austin
1894—Williams, Chas. S.,	Caldwell
1894—Williams, F. A.,	Austin
1907—Williams, Jos.,	Port Arthur
1885—Williams, Wm. D.,	Austin
1911—Williamson, J. D.,	Waco
1911—Willis, J. D.,	Waco
1897—Wilson, Wm. H.,	Houston
1909—Winslow, A.,	Laredo
1906—Wood, Houston,	Dallas
1898—Wood, J. H.,	Sherman
1911—Woods, J. W.,	Houston
1908—Woods, J. H.,	Corsicana
1909—Woodward, D. K., Jr.,	Austin
1910—Woodward, J. O.,	Coleman
1911—Woodward, N. P.,	Temple
1910—Woodward, Walter C.,	Austin
1911—Worsham, Joe A.,	Dallas
1896—Wozencraft, A. P.,	Dallas
1904—Wren, Clark C.,	Houston
1911—Wren, J. G.,	Waco
1909—Wright, W. A.,	San Angelo
1908—Wynne, Ike A.,	Fort Worth
1910—Wynne, T. C.,	San Angelo
1910—Yantis, A. B.,	Sweetwater
1897—Young, Jno. L.,	Dallas

## HONORARY MEMBERS.

Biggs, Albert W.,	Memphis, Tenn.
Fitts, Wm. C.,	Mobile, Ala.
Howe, William Wirt,	New Orleans, La.
Littleton, Martin W.,	New York City
Peck, Geo. R.,	Chicago, Ill.
Spencer, Selden P.,	St. Louis, Mo.

**NEW MEMBERS ADMITTED, GALVESTON, JULY, 1912.**

Adams, J. T.,	Orange.
Amerman, A. E.,	Houston.
Austin, Wm. E.,	Bay City.
Aynesworth, Joseph H.,	Childress.
Barkley, K. C.,	Houston.
Bassett, W. H.,	Brenham.
Botts, Thos. B.,	Brenham.
Bowers, Richard S.,	Caldwell.
Bowers, Wm. O.,	Giddings.
Branch, E. T.,	Houston.
Briggs, Clay S.,	Galveston.
Burgess, Geo. T.,	Dallas.
Butler, C. T.,	Beaumont.
Carpenter, H. L.,	Greenville.
Carpenter, W. C.,	Bay City.
Coke, Alex S.,	Dallas.
Cunningham, B. J.,	Galveston.
Davidson, W. L.,	Georgetown.
Darst, Harris P.,	Richmond.
Daniel, R. L.,	Victoria.
Darrouzet, J. L.,	Galveston.
Dean, W. L.,	Huntsville.
Dedmon, Perry G.,	Fort Worth.
Franklin, R. W.,	Houston.
Garrett, D. E.,	Houston.
Garrett, H. L.,	Galveston.
Green, John E., Jr.,	Houston.
Gaines, John W.,	Bay City.
Hill, Geo. A., Jr.,	Houston.
Holiday, Robert L.,	El Paso.
Harrell, Morris B.,	Greenville.
Holbrook, T. J.,	Galveston.
Huvelle, L. C.,	Dallas.
King, Geo. S.,	Nacogdoches.
Kincaid, John W.,	Austin.
Kampmann, I. S.,	San Antonio.
Kirlicks, John A.,	Houston.
Lipscomb, A. G.,	Hempstead.
Lewis, Richard R.,	Bay City.
Macgill, Chas. P.,	Galveston.
Monteith, W. E.,	Houston.
Moss, Edwards H.,	La Grange.
McKamy, W. C.,	Dallas.
McMeans, S. A.,	Galveston.
Minor, F. D., Jr.,	Beaumont.
Mills, Ballinger,	Galveston.
Munson, J. W.,	Angleton.
Pleasants, Aaron W.,	Houston.
Royston, Mart H.,	Galveston.
Ryan, J. B.,	San Antonio.
Searcy, Seth S.,	San Antonio.
Stone, Hugh L., Jr.,	Houston.
Weisberg, Alex F.,	Dallas.
Watkin, Robert N.,	Dallas.

## DECEASED MEMBERS

Abbott, Jo, Hillsboro.....	Died Feb. 11, 1908.
Adams, Z. T., Kaufman.....	Died Jan. 9, 1886.
Anderson, Jas. M., Waco.....	Died June 3, 1889.
Andrews, A. W., Terrell.....	Died Feb. 5, 1887.
Archer, Osceola, Austin.....	Died April, 1898.
Armistead, Geo. J., Texarkana.....	Died May 1, 1908.
Attlee, E. A., Laredo.....	Died Jan. 5, 1910.
Austin, Wm. J., Denton.....	Died Sept. 7, 1888.
Baker, Jas. A., Sr., Houston.....	Died Feb. 23, 1897.
Ball, F. W., Fort Worth.....	Died Sept. 9, 1900.
Ballinger, T. J., Galveston.....	Died Oct. 27, 1889.
Ballinger, W. P., Galveston.....	Died Jan. 28, 1888.
Banks, W. S., Temple.....	Died Jan. 19, 1911.
Bassett, B. H., Dallas.....	Died July 15, 1893.
Bledsoe, D. T., Cleburne.....	Died August, 1893.
Blake, S. R., Bellville.....	Died Nov., 1908.
Ballinger, D. C., San Antonio.....	Died Sept. 1, 1910.
Bonner, M. H., Tyler.....	Died Nov. 25, 1883.
Botts, W. B., Houston.....	Died March 7, 1894.
Bradley, L. D., Fairfield.....	Died Oct. 6, 1886.
Bradshaw, C. J., La Grange.....	Died June 13, 1888.
Brewer, David J., Washington.....	Died March 28, 1910.
Brown, R. L., Austin.....	Died Nov. 9, 1910.
Bryant, J. D., Richmond.....	Died Aug. 16, 1904.
Burges, W. H., Seguin.....	Died June 24, 1898.
Burts, J. H., Austin.....	Died Jan. 15, 1894.
Carrington, W. A., Houston.....	Died July 14, 1892.
Chesley, A., Beeville.....	Died July 17, 1907.
Cleveland, C. L., Galveston.....	Died Feb., 1892.
Cooper, M. S., Conroe.....	Died March 30, 1899.
Craddock, John T., Greenville.....	Died March 21, 1911.
Crain, W. H., Cuero.....	Died Feb. 10, 1896.
Crawford, M. L., Dallas.....	Died May 15, 1910.
Croom, J. L., Jr., Wharton.....	Died Aug. 2, 1890.
Davis, A. L., Houston.....	
Davis, Geo. W.,.....	Died Sept. 23, 1898.
Davis, L. B., Cleburne.....	Died Aug. 31, 1910.
Devine, Thos. J., San Antonio.....	Died March 16, 1890.
Dodd, Thos. W., Laredo.....	Died Jan. 13, 1907.
Finley, N. W., Dallas.....	Died Sept. 23, 1910.
Fisher, Sam R., Austin.....	Died Feb. 12, 1911.
Garrett, C. C., Brenham.....	Died Sept. 15, 1905.
Garrett, N. P., Cameron.....	Died Aug. 3, 1888.
Giles, W. M., Mineola.....	Died May 27, 1901.
Givens, J. S., Corpus Christi.....	Died Jan. 20, 1887.
Goldthwaite, George, Houston.....	Died April 23, 1897.
Gosling, H. L., Castroville.....	Died Feb. 21, 1885.
Gould, Robert S., Austin.....	Died June 30, 1904.
Granberry, M. C., Austin.....	Died Dec. 16, 1902.
Green, John A., Sr., San Antonio.....	Died July 8, 1899.
Greene, S. P., Fort Worth.....	Died June 30, 1904.
Gresham, Walter, Jr., Galveston.....	Died Jan. 15, 1905.
Guinn, R. H., Rusk.....	Died Jan. 18, 1888.
Haggerty, J. J., Bellville.....	Died April 7, 1893.
Hancock, John, Austin.....	Died July 19, 1893.

Harlan, Z. I., Marlin.....	Died July 25, 1911.
Harris, Jas. L., Dallas.....	Died Feb. 4, 1902.
Harwood, Thos. M., Gonzales.....	Died Jan. 29, 1900.
Henderson, John N., Bryan.....	Died Dec. 21, 1907.
Henry, John L., Dalas.....	Died Oct. 21, 1907.
Herring, M. D., Waco.....	Died Nov. 27, 1897.
Hill, George L., Gainesville.....	Died July 25, 1887.
Hill, R. J., Austin.....	Died March 30, 1889.
Holmes, H. M., Mason.....	Died Aug. 17, 1895.
Hurt, J. M., Dallas.....	Died April 19, 1903.
Hutchings, R. M., Galveston.....	Died Aug. 22, 1895.
Jackson, A. M., Sr., Austin.....	Died July 11, 1889.
Jackson, A. M., Jr., Austin.....	Died Aug. 17, 1894.
John, A. S., Beaumont.....	Died Feb. 5, 1889.
Johnson, Byron, Galveston.....	Died March 2, 1900.
Jones, C. Anson, Houston.....	Died Jan. 10, 1888.
Kemp, Wyndham, El Paso.....	Died Feb. 9, 1909.
Kennard, John R., Anderson.....	Died Oct. 24, 1884.
Kilgore, S. B., Wills Point.....	Died Dec. 10, 1891.
Kirk, LaFayette, Brenham.....	Died July 29, 1893.
Labatt, Henry J., Galveston.....	Died Sept. 8, 1900.
Lamar, L. Q. C., Dallas.....	Died Dec. 15, 1910.
Languille, P. T., Galveston.....	Died Oct. 14, 1882.
Ledbetter, W. H., La Grange.....	Died April 24, 1896.
Levi, Leo N., New York.....	Died Jan. 13, 1904.
Lightfoot, Henry W., Paris.....	Died Aug., 1901.
Lindsley, Philip, Dallas.....	Died Dec. 4, 1911.
Logue, L. J., Columbus.....	Died May 15, 1884.
Lockett, R. R., Texarkana.....	Died Dec. 6, 1906.
Looscan, M., Houston.....	Died Sept. 7, 1897.
Mann, H. K., Galveston.....	Died Dec. 14, 1888.
Martin, Carlisle B., Houston.....	
Martin, Thos. P., Beaumont.....	
Mason, George, Galveston.....	Died Feb. 3, 1896.
Mason, J. R., San Antonio.....	Died July 29, 1888.
Masterson, B. T., Jr., Galveston.....	Died Dec. 13, 1898.
Masterson, J. Harris, Galveston.....	Died June 27, 1905.
Maxey, S. B., Paris.....	Died Aug. 16, 1895.
McC Campbell, John S., Corpus Christi.....	Died Aug. 19, 1907.
McClellan, E. D., Bonham.....	Died Nov. 28, 1899.
McCoy, John C., Dallas.....	Died April 30, 1887.
McLemore, M. C., Galveston.....	Died July 23, 1897.
Miller, Clarence H., Austin.....	Died Nov. 28, 1908.
Moore, George F., Austin.....	Died Aug. 30, 1883.
Moore, John M., Edna.....	Died Sept. 27, 1902.
Moore, L. W., La Grange.....	Died Dec. 30, 1911.
Morgan, Richard, Dallas.....	Died Feb. 13, 1907.
Morse, Chas. S., Austin.....	Died May 13, 1902.
Mott, M. F., Galveston.....	Died Nov. 18, 1906.
Noble, S. B., Galveston.....	Died March 20, 1890.
Ochse, J. F., San Antonio.....	Lied Sept. 24, 1888.
Ogden, Chas. W., San Antonio.....	Died April 19, 1911.
Paschall, George, San Antonio.....	Died Sept. 7, 1894.
Pearson, P. E., Richmond.....	Died July 31, 1895.
Peck, L. D., Fairfield.....	Died May 30, 1885.
Peeler, A. J., Austin.....	Died Nov. 3, 1886.
Phelps, R. H., La Grange.....	Died March 24, 1898.
Ponton, T. J., Gonzales.....	Died Nov. 9, 1889.
Prather, Wm. L., Austin.....	Died July 24, 1905.

Prendergast, D. M., Waco.....	
Prendergast, H. D., Austin.....	Died Nov. 5, 1886.
Proctor, D. C., Cuero.....	Died May 8, 1908.
Quinan, George, Wharton.....	Died Jan. 25, 1893.
Read, N. C., Corsicana.....	Died Oct. 25, 1884.
Roberts, O. M., Austin.....	Died May 19, 1898.
Robertson, John W., Austin.....	Died June 30, 1892.
Robertson, Sawnie, Dallas.....	Died June 21, 1892.
Robson, W. S., La Grange.....	Died Oct. 7, 1905.
Ruby, John H., Houston.....	Died Feb. 16, 1903.
Rucker, W. T., Belton.....	Died Aug. 10, 1885.
Sayles, John, Abilene.....	Died May 22, 1897.
Scott, J. Z. H., Galveston.....	Died Jan. 18, 1904.
Sears, Wm., G., Houston.....	Died March 19, 1910.
Semple, J. M., Sherman.....	Died Dec. 9, 1903.
Sexton, Frank B., El Paso-Marshall.....	Died May 15, 1900.
Shelley, N. G., Austin.....	Died Jan. 5, 1898.
Shropshire, E. L., Comanche.....	Died July 4, 1894.
Simkins, E. J., Corsicana.....	Died June 25, 1905.
Simpson, Isaac P., San Antonio.....	Died March 12, 1896.
Smith, Tillman, Fort Worth.....	Died Jan. 26, 1908.
Smith, Thos. H., Hillsboro.....	Died March 15, 1901.
Spencer, F. M., Galveston.....	Died July 14, 1907.
Stayton, John W., Victoria.....	Died July 5, 1894.
Stewart, Clegg, Galveston.....	Died Jan. 15, 1902.
Stewart, Joe H., Austin.....	Died Aug. 14, 1890.
Storey, L. J., Austin.....	Died March 28, 1909.
Stokey, Roland H., Dallas.....	
Swearingen, J. T., Brenham.....	Died Aug. 14, 1890.
Teichmuller, H., La Grange.....	Died Feb. 17, 1901.
Templeton, John D., Fort Worth.....	Died April 24, 1893.
Thurmond, P. C., Bonham.....	Died April 13, 1910.
Timmons, B., La Grange.....	Died June 17, 1884.
Tucker, Chas. Fred, Dallas.....	Died March 16, 1909.
Tucker, Phillip C., Galveston.....	Died July 9, 1894.
Waelder, Jacob, San Antonio.....	Died Aug. 28, 1887.
Walker, A. S., Sr., Austin.....	Died Aug. 14, 1896.
Walker, Richard S., Galveston.....	Died May 24, 1892.
Wallace, W. R., Castroville.....	Died Nov. 12, 1884.
Ward, P. H., San Antonio.....	Died Jan. 28, 1899.
Walthall, L. N., San Antonio.....	Died Feb. 22, 1894.
Waul, Thos. N., Neyland.....	Died July 28, 1903.
Webb, Britton R., Fort Worth.....	Died June 28, 1906.
West, Chas. S., Austin.....	Died Oct. 23, 1885.
West, Geo. T., Fort Worth.....	Died Dec. 3, 1908.
West, Robert G., Austin.....	Died April 25, 1904.
Welch, Stanley, Corpus Christi.....	Died Nov. 9, 1906.
Wheeler, Royall T., Galveston.....	Died Oct. 25, 1900.
White, John P., Austin.....	Died Jan. 16, 1905.
Wilkes, F. D., Lampasas.....	Died Nov. 21, 1886.
Williams, Eugene, Waco.....	Died Sept. 21, 1909.
Willie, Asa H., Galveston.....	Died March 16, 1899.
Willson, J. I., Houston.....	Died Nov. 26, 1906.
Willson, Sam A., Rusk.....	Died Jan. 24, 1891.
Winter, John G., Waco.....	Died July 26, 1908.
Yoakum, Chas. H., Fort Worth.....	Died Jan. 1, 1909.
Young, J. L., Cooper.....	Died Feb. 12, 1912.

## **In Memoriam**

A. L. Davis.....	Houston
Z. I. Harlan.....	Marlin
Philip Lindsley .....	Dallas
Carlisle B. Martin.....	Houston
L. W. Moore.....	La Grange
D. M. Prendergast.....	Waco
Roland H. Stokey.....	Dallas
J. L. Young.....	Cooper

**PRESIDENTS  
OF THE  
TEXAS BAR ASSOCIATION**

Thomas J. Devine, San Antonio.....	1882
T. N. Waul, Galveston.....	1882-3
J. H. McLeary, San Antonio.....	1883-4
B. H. Bassett, Brenham.....	1884-5
A. J. Peeler, Austin.....	1885-6
T. J. Beall, El Paso.....	1886-7
W. L. Crawford, Dallas.....	1887-8
F. Charles Hume, Galveston.....	1888-9
H. W. Lightfoot, Paris.....	1889-90
Norman G. Kittrell, Houston.....	1890-1
Seth Sheperd, Dallas.....	1891-2
John N. Henderson, Bryan.....	1892-3
S. C. Padelford, Cleburne.....	1893-4
Thomas H. Franklin, San Antonio.....	1894-5
William L. Prather, Waco.....	1895-6
William H. Clark, Dallas.....	1896-7
William Aubrey, San Antonio.....	1897-8
Frank C. Dillard, Sherman.....	1898-9
Presley K. Ewing, Houston.....	1899-1900
M. A. Spoonts, Fort Worth.....	1900-1
James B. Stubbs, Galveston.....	1901-2
Lewis R. Bryan, Houston.....	1902-3
T. S. Reese, Hempstead.....	1903-4
H. C. Carter, San Antonio.....	1904-5
H. M. Garwood, Houston.....	1905-6
A. L. Beaty, Sherman.....	1906-7
A. E. Wilkinson, Austin.....	1907-8
Yancey Lewis, Dallas.....	1908-9
Wm. H. Burges, El Paso.....	1909-10
Hiram Glass, Texarkana.....	1910-11
R. E. L. Saner, Dallas.....	1911-12
John T. Duncan, La Grange.....	1912-13

## ANNUAL ADDRESSES

- 1883—Mr. Richard S. Walker, of Austin:  
    "The Bench and Bar in the Early Days of Texas."  
    "The Lawyer as a Citizen."
- 1884—Mr. B. H. Bassett, of Brenham:
- 1886—Mr. Sawnie Robertson, of Dallas:  
    "The Death of Chancery."
- 1887—Mr. C. C. Garrett, of Brenham:  
    "Conflict Between State and Federal Courts as to Jurisdiction  
    of the Former Over Non-Residents."
- 1888—Mr. F. Charles Hume, of Galveston:  
    "Execution Process; Should the Legislature Extend It?"
- 1889—Mr. S. B. Maxey, of Paris:  
    "The Federal Constitution."
- 1893—Mr. Thomas H. Franklin, of San Antonio:  
    "Judicial Centralization."
- 1894—Mr. B. D. Tarleton, of Fort Worth:  
    "Some Reflections on the Relations of Capital and Labor."
- 1895—Mr. O. M. Roberts, of Austin:  
    "The Right and Duty of Coinage by the United States."
- 1896—Mr. Seymour D. Thompson, of Missouri:  
    "Government by Lawyers."
- 1897—Mr. N. W. Finley, of Dallas:  
    "Trusts, Combinations and Conspiracies in Restraint of Trade."
- 1898—Mr. Sam J. Hunter, of Fort Worth:  
    "Life Tenures of Office in a Republican Government."
- 1899—Mr. F. Charles Hume, of Galveston:  
    "The Supreme Court of the United States."
- 1900—Mr. William Wirt Howe, of New Orleans:  
    "Roman and Civil Law in the Three Americas."
- 1904—Mr. Robert G. Street, of Galveston:  
    "Sovereignty."
- 1905—Mr. T. J. Brown, of Austin:  
    "Our State Judiciary."
- 1906—Justice David J. Brewer, of Washington:  
    "Two Periods in the History of the Supreme Court."
- 1907—Mr. Yancey Lewis, of Dallas:  
    "Institutional Changes."
- 1908—Mr. M. L. Crawford, of Dallas:  
    "The Supreme Court of Texas."
- 1909—Mr. W. C. Fitts, of Mobile, Alabama:  
    "Enforcement of Law and an Independent Judiciary."
- 1910—Mr. Geo. R. Peck of Chicago, Illinois:  
    "The Growth of Institutional Government."



1911—Mr. Martin W. Littleton, of New York City:

“Structural and Economic Changes.”

1912—Mr. Albert W. Biggs, Memphis, Tennessee:

“The Unrest as to the Administration of Law.”

## PAPERS READ

- 1883—Mr. A. J. Peeler, of Austin:  
"Rights of Land Owners in Texas to Protection Against Governmental and Individual Aggression in the Use and Enjoyment of Their Property."
- 1883—Mr. Robert G. Street, of Galveston:  
"Texas Pleadings."
- 1884—Mr. O. M. Roberts, of Austin:  
"Legal Education and Admission to the Bar."
- 1889—Mr. O. M. Roberts, of Austin:  
"Law and Pleading."
- 1890—Mr. B. H. Bassett, of Dallas:  
"The Model Brief."
- 1891—Mr. J. M. Avery, of Dallas:  
"Liability of an Organizer of a Corporation for Its Acts."
- 1892—Mr. C. C. Garrett, of Brenham:  
"Limitations of Actions When There Is a Trustee Authorized to Sue."
- 1892—Mr. S. C. Padelford, of Cleburne:  
"Government."
- 1893—Mr. H. Teichmueller, of La Grange:  
"The Homestead Law."
- 1893—Mr. T. S. Reese, of Hempstead:  
"Criminal Law."
- 1893—Mr. John G. Winter, of Waco:  
"Community Law."
- 1893—Mr. Richard Morgan, of Dallas:  
"Receiverships."
- 1893—Mr. James G. Scott, of Fort Worth:  
"Private Corporations."
- 1894—Mr. E. B. Perkins, of Greenville:  
"The Statutory Craze."
- 1894—Mr. Robert G. Street, of Galveston:  
"Medical Jurisprudence."
- 1894—Mr. Edwin Hobby, of Houston:  
"The Legal Profession; Its Value, Importance and Influence."
- 1894—Mr. Charles S. Todd, of Texarkana:  
"Assignments for the Benefit of Creditors."
- 1894—Mr. Norman G. Kittrell, of Houston:  
"The Criminal Law of Texas and Its Administration."
- 1894—Mr. T. H. Connor, of Eastland:  
"Juries and Jury Trials."
- 1894—Mr. T. F. Harwood, of Gonzales:  
"The Respect Due by Members of the Bar to the Judiciary."

- 1895—Mr. George W. Davis, of Dallas:  
    "Texas Pleadings."
- 1895—Mr. Wm. H. Clark, of Dallas:  
    "Deeds of Trust Preferring Creditors."
- 1895—Mr. John G. Tod, of Houston:  
    "Administration of Community Property by the Survivor."
- 1895—Mr. R. L. Batts, of the University of Texas:  
    "Some Reflections Concerning Legal Education."
- 1896—Mr. E. J. Simkins, of Dallas:  
    "Proper Subjects of Legislation."
- 1896—Mr. F. W. Ball, of Fort Worth:  
    "A Desultory Denunciation of Texas Law and Procedure."
- 1896—Mr. H. Telchmueller, of LaGrange:  
    "Judge and Jury."
- 1896—Mr. A. E. Wilkinson, of Denison:  
    "A Review of Some Recent Noteworthy Decisions by the  
    Higher Courts of Texas."
- 1896—Mr. John Dowell, of Austin:  
    "The Symbolism of Commerce—Trade Marp."
- 1897—Mr. Leroy G. Denman, of San Antonio:  
    "Our Present Judicial System; Its Advantages and De-  
    fects."
- 1897—Mr. Joseph Spence, Jr., of San Angelo:  
    "A Review of Recent Noteworthy Decisions of the Higher  
    Courts of Texas."
- 1897—Mr. M. A. Spoonts, of Fort Worth:  
    "A Divided Allegiance."
- 1897—Mr. Presley K. Ewing, of Houston:  
    "The De Facto Wife."
- 1897—Mr. Wm. Aubrey, of San Antonio:  
    "Mob Law."
- 1897—Mr. B. R. Webb, of Fort Worth:  
    "Some Needed Reforms in Our Real Estate Laws."
- 1898—Mr. Norman G. Kittrell, of Houston:  
    "Needed Reforms in the Assessment and Collection of  
    Taxes."
- 1898—Mr. George E. Miller, of Wichita Falls:  
    "Some Features of the Uniform Bankruptcy Law."
- 1898—Mr. Jonathan Lane, of LaGrange:  
    "Our Courts."
- 1898—Mr. W. A. Kincaid, of Galveston:  
    "In the Known Certainty of the Law Is the Safety of All."
- 1898—Mr. B. R. Webb, of Fort Worth:  
    "A Review of Recent Noteworthy Decisions of the Higher  
    Courts of Texas."
- 1899—Mr. T. S. Reese, of Galveston:  
    "A Plea for Exactness and Certainty of the Law."

- 1899—Mr. Edward F. Harris, of Galveston:  
    "Some Recent Noteworthy Decisions in Civil Cases by the  
    Higher Courts of Texas."
- 1899—Mr. W. C. Wear, of Hillsboro:  
    "Admission to the Bar."
- 1899—Mr. Philip Lindsley:  
    "Humorous Report of Annual Meeting of the Tennessee  
    State Bar Association."
- 1900—Mr. J. B. Dibrell, of Seguin:  
    "The Legislative Function."
- 1900—Mr. J. A. Holland, of Orange:  
    "The White Man's Burden, from a Legal Standpoint."
- 1900—Mr. A. E. Wilkinson, of Austin:  
    "Law and Literature."
- 1900—Mr. Edwin B. Parker, of Houston:  
    "Anti-Railroad Personal Injury Litigation in Texas."
- 1901—Mr. John G. Tod, of Houston:  
    "Recent Noteworthy Decisions of the Texas Courts."
- 1901—Mr. Norman G. Kittrell, of Houston:  
    "The Barker Case."
- 1902—Mr. Maco Stewart, of Galveston:  
    "The Story of a Land Title."
- 1902—Mr. John Charles Harris, of Houston:  
    "Trial by Jury in Civil Causes."
- 1902—Mr. Yancey Lewis, of the University of Texas:  
    "The Rights of Riparian Owners in the Matter of Irriga-  
    tion."
- 1903—Mr. Jno. N. Henderson, of Bryan:  
    "The Pardoning Power, Its Uses and Abuses."
- 1903—Mr. Jno. C. Townes, of Austin:  
    "Courses of Study in Law Pursued in the State University."
- 1903—Mr. Jno. C. Walker, of Galveston:  
    "Some Peculiarities of the Admiralty Law."
- 1903—Mr. Wm. D. Williams, of Fort Worth:  
    "The Taxation of Intangibles."
- 1903—Mr. C. F. Greenwood, of Hillsboro:  
    "Will Injunction Lie to Restrain the Local Option Law  
    from Going Into Effect?"
- 1903—Mr. S. J. Brooks, of San Antonio:  
    "The Increase of Litigation in Cities and Some Suggested  
    Amendments to the Practice Act."
- 1904—Mr. Chas. K. Bell, of Fort Worth:  
    "Certain Needed Reforms."
- 1904—Mr. Edward F. Harris, of Galveston:  
    "Review of Recent Noteworthy Decisions."
- 1904—Mr. Alfred E. Wilkinson, of Austin:  
    "The Legal Mind."

- 1904—Mr. A. L. Beaty, of Sherman:  
    "Impeaching the Verdict of the Jury."
- 1904—Mr. Jno. C. Walker, of Galveston:  
    "The Harter Act."
- 1904—Mr. W. M. Caldwell, of El Paso:  
    "Growth of Central Power in the United States."
- 1904—Mr. Clarence H. Miller, of Austin:  
    "Our Lawmakers, the Judges."
- 1904—Mr. Ocie Speer, of Bowie:  
    "The 'Texas Rule' in Irrigation."
- 1904—Mr. Thomas Shearon, of Dallas:  
    "The Vendor's Lien in Texas; An Historical Essay."
- 1904—Mr. Lewis Fisher, of Galveston:  
    "Needed Amendments of Probate Law."
- 1905—Mr. W. J. Moroney, of Dallas:  
    "How to Reform Our Civil Procedure."
- 1905—Mr. M. H. Gossett, of Dallas:  
    "Allen and Corporate Ownership of Land in Texas."
- 1905—Mr. B. R. Webb, of Fort Worth:  
    "C. O. D. Sales of Intoxicating Liquors."
- 1905—Mr. Wm. H. Burges, of El Paso:  
    "A Comparative Study of the Constitution of the United States of Mexico and the United States of America."
- 1905—Mr. Nelson Phillips, of Dallas:  
    "A Great English Lawyer."
- 1905—Mr. B. D. Tarlton, of Austin:  
    "The Texas Homestead Exemption."
- 1905—Mr. Jno. N. Henderson, of Bryan:  
    "The Old Court of Criminal Appeals and Its Work."
- 1906—Mr. U. M. Rose, of Little Rock:  
    "The Code Napoleon."
- 1906—Mr. R. G. Street, of Galveston:  
    "Evolution of Law."
- 1906—Mr. Jordan F. Sellers, of Morrilton, Ark.:  
    "Trade Monopolies and Their Legal Restraint."
- 1906—Mr. Selden P. Spencer, of St. Louis:  
    "Lawlessness and Lawyers."
- 1906—Mr. Lewis Rhoton, of Little Rock, Ark.:  
    "The Law of Bribery."
- 1906—Mr. T. W. Gregory, of Austin:  
    "The Origin and Growth of the Ku Klux Klan."
- 1906—Mr. Sam B. Dabney, of Houston:  
    "A Criticism of the Organization of Our Courts and a Theory for Their Reorganization."
- 1906—Mr. Wm. B. Smith, of Little Rock, Ark.:  
    "Bills of Lading as Collateral Security."
- 1907—Mr. Edgar Watkins, of Houston:  
    "Should the Legal Status of the Negro Be Changed?"

- 1907—Mr. W. M. Holland, of Dallas:  
 "Liability of Trusts for Private Wrongs."
- 1907—Mr. John Chas. Harris, of Houston: •  
 "Legal Ethics."
- 1907—Mr. Robert A. John, of Beaumont:  
 "Uniform Legislation." •
- 1907—Mr. Thomas H. Franklin, of San Antonio:  
 "The Honor of the Bar."
- 1908—Mr. Jno. T. Duncan, of LaGrange:  
 "Is the Statute Constitutional Which Authorizes Notaries Public to Fine and Imprison Witnesses Who Refuse to Answer Interrogatories?"
- 1908—Mr. J. C. Crisp, of Beeville:  
 "Needed Regulation of the Abstract of Title Business."
- 1908—Mr. John G. Winter, of Waco:  
 "Examination of Witnesses."
- 1908—Mr. Hiram Glass, of Texarkana:  
 "Railroads—National vs. State Control."
- 1908—Mr. A. E. Wilkinson, of Austin:  
 "Enforcing Competition by Law."
- 1909—Mr. R. L. Batts, of Austin:  
 "The Inefficiency of the Administration of the Law."
- 1909—Mr. R. B. Levy, of Texarkana:  
 "Criminal Laws of an Early Period."
- 1909—Mr. S. P. Jones, of Marshall:  
 "Unreasonable Delays in the Final Disposition of Civil Suits."
- 1910—Mr. Allan D. Sanford, of Waco:  
 "The Lawyer in History."
- 1910—Mr. Lewis M. Dabney, of Dallas:  
 "Pleading and Practice in the Land of Canaan."
- 1910—Mr. Chas. H. Ogden, of San Antonio:  
 "The Honorarium."
- 1911—Mr. Wm. Hodges, of Texarkana:  
 "Judicial Reform in Texas."
- 1911—Mr. Ben G. Kendall, of Waco:  
 "A Sketch of John Marshall."
- 1911—Mr. H. N. Atkinson, of Houston:  
 "Some Results of Holding the Legal Intellect in Mortmain."
- 1912—Mr. Thomas H. Franklin of San Antonio:  
 "The Recall of Judges."
- 1912—Mr. Wm. H. Wilson, of Houston:  
 "Incorporation of Trading Companies Engaged in Interstate Commerce by a Federal Charter, and the Consequences Which Would Flow Therefrom."
- 1912—Mr. Maco Stewart, of Galveston: •  
 "Breen vs. Morehead, 136 S. W. Rep., 1047."
- 1912—Mr. John M. Spellman, of Dallas and Chicago:  
 "Patent Laws."

## TEXAS BAR ASSOCIATION

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### CONSTITUTION.

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#### ARTICLE I.

##### NAME AND OBJECT OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage intercourse among its members.

#### ARTICLE II.

##### MEMBERSHIP.

SECTION 1. Any attorney of the Texas Bar, or any clerk or deputy clerk of an appellate court of the State of Texas, in honorable standing, upon his written application, may be entitled to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of \$5.00 shall accompany the same, \$2.50 initiation fee and \$2.50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association, and if said report be favorable a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected.

#### ARTICLE III.

##### OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers, and the President and Vice-President shall be *ex officio* members of the board.

SEC. 3. The officers and Directors shall hold their offices for one year and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolution of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.

##### COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admissions to the Bar; on Criminal Law and Criminal Procedure; on Commercial Law; on Publication; on Grievances and Discipline.

SEC. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.

##### GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees, and establish by-laws for its government. It shall have power to remove officers and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessment to be levied on the members for the support of the Association and the promotion of its object.

#### ARTICLE VI.

##### QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.

##### ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association



with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

#### ARTICLE VIII.

##### MEETINGS.

SECTION 1. The time and place for holding the annual meeting shall be determined by the Board of Directors and announcement thereof made to the Association sixty (60) days in advance of the date of such meeting.

#### ARTICLE IX.

##### AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of the members present.

#### ARTICLE X.

##### DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2.50 as annual dues.

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#### BY-LAWS.

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#### ARTICLE I.

##### PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President *pro tem* shall be chosen by and from the attending members.

#### ARTICLE II.

##### ADDRESS AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

## ARTICLE III.

## ANNUAL MEETING AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meeting shall be as follows:

1. Opening address of the President.
2. Nominations and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of Secretary and Treasurer.
6. Reports of Standing Committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.
7. Reports of special committees.
8. Nomination of officers.
9. Miscellaneous business.
10. Election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and, except otherwise provided by the Constitution and By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other addresses made or paper read or presented shall be printed except by order of the Committee on Publication.

SEC. 7. The Board of Directors shall, as soon as parties have been selected to deliver the annual address and read essays, notify the Secretary of this Association of such selections, and of any other matters of especial interest to be brought before the next annual meeting.

SEC. 8. The Secretary shall be and is hereby required to mail each member of the Association, ten days before each annual meeting, a written or printed notice of the time and place of such meeting, giving a statement of the addresses to be delivered, the papers to be read, and other matters of special interest, and shall also cause such notice to be published.

## ARTICLE IV.

## MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be \$5.00, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting, in advance, and should any member neglect to pay them for one year at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

## ARTICLE V.

## OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hours as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committees present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

SEC. 6a. It shall be the duty of the President to use every possible means to ascertain the death of any member of the Association, and, when such death is ascertained, it shall be his duty to seek for a personal friend of the deceased who would be a proper committeeman and to add such friend to the Committee on Deceased Members.

It shall further be the duty of the President to draft bills upon all measures which are unanimously recommended by the Association, and to present such bills to the Legislature for enactment into laws; and the President, in his Annual Address, shall report to the Association how he has fulfilled this obligation.

## ARTICLE VI.

## STANDING COMMITTEES.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical working of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation and experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means of promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the Bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of the Association. All complaints against any member of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association; of all of which the complainant shall be notified by the committee.

## ARTICLE VII.

## RESOLUTIONS.

SECTION 1. No resolutions complimentary to any officer or member, for any service performed, paper read or address delivered, shall be considered by this Association.

## ARTICLE VIII.

## AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association by a vote of two-thirds of those present; provided, that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

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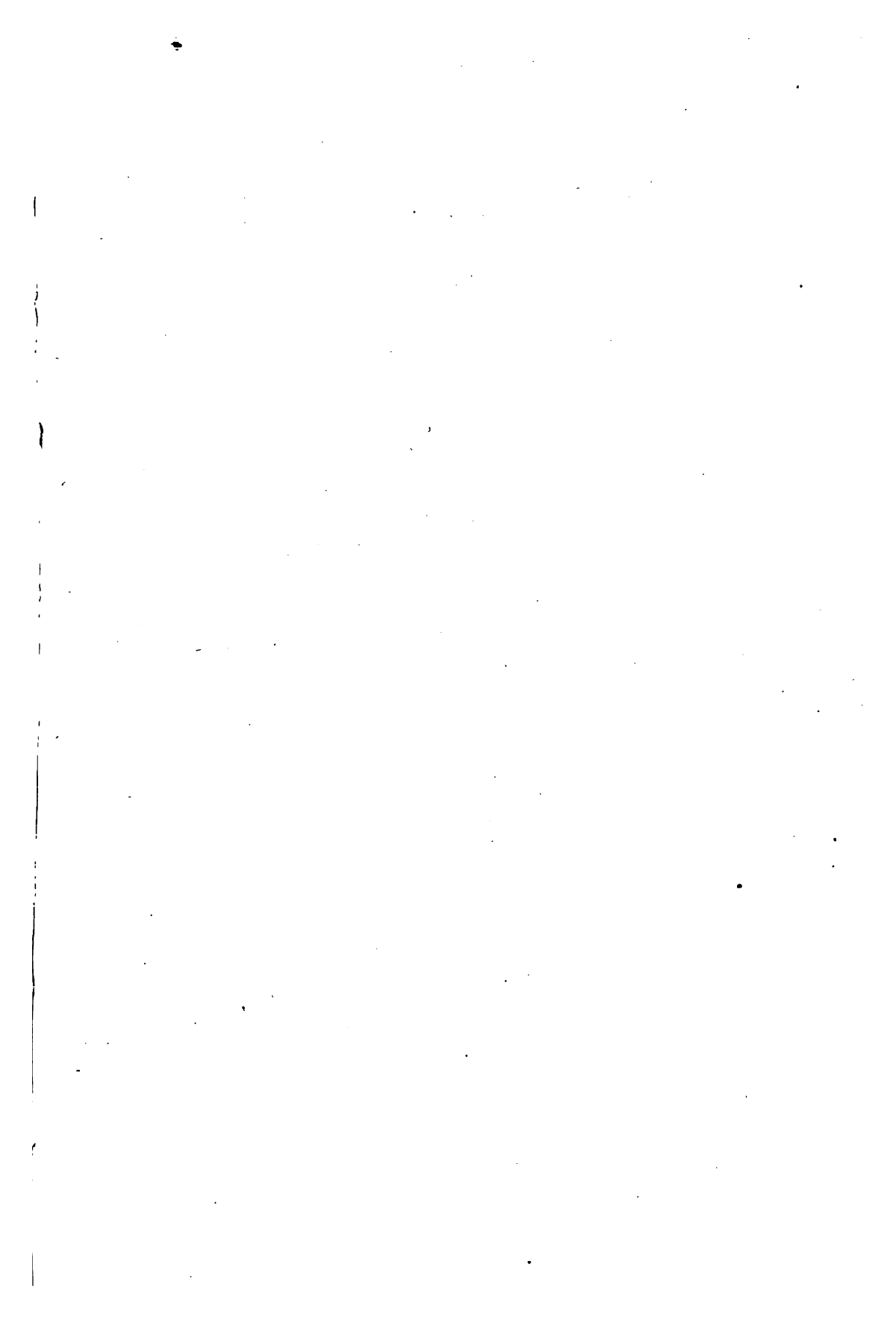
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